

# THE UNITED NATIONS AND THE FIGHT AGAINST TERRORISM

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## HEARING AND BRIEFING

BEFORE THE  
SUBCOMMITTEE ON  
INTERNATIONAL TERRORISM AND  
NONPROLIFERATION

OF THE

COMMITTEE ON  
INTERNATIONAL RELATIONS  
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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## HEARING: THE UNITED NATIONS AND THE FIGHT AGAINST TERRORISM

THURSDAY, MARCH 17, 2005

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INTERNATIONAL TERRORISM  
AND NONPROLIFERATION,  
COMMITTEE ON INTERNATIONAL RELATIONS,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 1:53 p.m. in room 2255, Rayburn House Office Building, Hon. Edward Royce, (Chairman of the Subcommittee) presiding.

Mr. ROYCE. This hearing will come to order.

The title of this hearing is, "The United Nations and the Fight Against Terrorism." A priority for the International Relations Committee in this 109th Congress is reform at the United Nations, and today we will look at a long overlooked issue, which is the United Nations' role in fighting terrorism. We will be looking at what the U.N. is doing, how well is it doing it, what should it be doing to meet the grave challenge of international terrorism, and is the U.N. worth reform efforts in this area?

U.N. Security Council General Kofi Annan is emphasizing U.N. efforts to combat terrorism. Last week, speaking at an international summit on terrorism in Madrid, Annan laid out what he called a "principled, comprehensive" strategy to fight terrorism globally. The Secretary-General seems to understand the centrality of fighting terrorism to world security. Fighting terrorism is certainly central to our Nation's security.

For too long, though, the U.N. has not agreed on what to fight. In Madrid, the Secretary-General called for world leaders to succeed at defining terrorism. He said, "Terrorism can never be accepted or justified in any case whatsoever." In other words, the adage of "one man's terrorist is another man's freedom fighter" no longer cuts it.

Yet many countries, particularly in the Arab world, continue to defend terrorist attacks on Israelis and others, resisting unequivocal condemnations. This ambiguity over what terrorism is corrodes international efforts against it.

The structure against killing civilians, one of the pillars against anarchy in the world, is fragile. The rise of extremist doctrines is real. The rights of civilians and the rights of non-combatants against violent zealots must be aggressively asserted. We will see where this debate goes.

As we will hear today, counterterrorism efforts at the U.N. have a mixed record. U.N. sanctions on al-Qaeda figures have not netted

much. Attempts to prod states into adopting and enforcing anti-terrorism legislation have been frustrating. In some cases member states lack resources. In others, there is a shortage of political will. Policies at the U.N. have also been part of the problem. We should revive the “name and shame” policy, as it was known. We should revive that policy that we unwisely abandoned which one witness has firsthand experience with. My bias is toward spotlighting the terrorism policies of nations throughout the world. We will hear recommendations for other U.N. reforms today.

We should work within the United Nations system where and when we productively can. It has the potential of adding value in fighting terrorism. But we should never lose sight of the fact that many U.N. member states do not share our values. Some are active sponsors of terrorism. In some instances the best policy for the U.S. is working closely with allies to smash the terrorist networks that threaten our Nation. As with issues of war and peace, we should always maintain our prerogative to defend ourselves against terrorism alone if we must.

[The prepared statement of Mr. Royce follows:]

PREPARED STATEMENT OF THE HONORABLE EDWARD R. ROYCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL TERRORISM AND NONPROLIFERATION

WASHINGTON, D.C.—Today, the House Subcommittee on International Terrorism and Nonproliferation (ITNP) held a hearing to examine the United Nations and the fight against terrorism. ITNP Chairman U.S. Rep. Ed Royce (R—CA—40) issued the following opening statement:

“A priority for the Committee on International Relations in the 109th Congress is reforming the United Nations. Today, we will examine an often-overlooked issue: the United Nation’s role in fighting terrorism. What is it doing? How well is it doing it? What should the U.N. be doing to meet the grave challenge of international terrorism? Is it worth efforts to reform the U.N. in this area?”

“U.N. Secretary-General Kofi Annan is emphasizing U.N. efforts to combat terrorism. Last week, speaking at an international summit on terrorism in Madrid, Annan laid out what he called a ‘principled, comprehensive’ strategy to fight terrorism globally. The Secretary-General seems to understand the centrality of fighting terrorism to world security. Fighting terrorism is certainly central to our nation’s security.

“For too long though the U.N. has not agreed on what to fight. In Madrid, the Secretary-General called for world leaders to succeed at defining terrorism. He said, ‘Terrorism can never be accepted or justified, in any cause whatsoever.’ In other words, the adage of ‘one man’s terrorist is another’s freedom fighter’ no longer cuts it. Yet many countries, particularly in the Arab world, continue to defend terrorist attacks on Israelis and others, resisting unequivocally condemnations. This ambiguity over what ‘terrorism’ is corrodes international efforts against it. The stricture against killing civilians, one of the pillars against anarchy in the world, is fragile—the rise of extremist doctrines is real. The rights of civilians and non-combatants against violent zealots must be aggressively asserted. We will see where this debate goes.

“As we will hear today, counter-terrorism efforts at the U.N. have a mixed record. U.N. sanctions on al Qaeda figures have not netted much. Attempts to prod states into adopting and enforcing anti-terrorism legislation have been frustrating. In some cases, member states lack resources; in others, there is a shortage of political will. Policies at the U.N. have been part of the problem too. We should revive the ‘name and shame’ policy we unwisely abandoned, which one witness has first-hand experience with. My bias is toward spotlighting the terrorism policies of nations throughout the world. We will hear recommendations for other U.N. reforms today.

“We should work within the United Nations system where and when we productively can. It has the potential of adding value in fighting terrorism. But we should never lose sight of the fact that many U.N. member states do not share our values; some are active sponsors of terrorism. In some instances, the best policy for the U.S. is working closely with allies to smash the terrorist networks that threaten our na-

tion. As with issues of war and peace, we should always maintain our prerogative to defend ourselves against terrorism, alone if we must.”

Mr. ROYCE. I will now turn to the Ranking Member for an opening statement. Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Royce. I notice that both the Chair and Ranking Member of this Subcommittee are from Southern California, and think of how much better the House would be if that was true of all our Committees and Subcommittees.

I want to thank the Chairman for holding these hearings on the U.N.’s role in counterterrorism efforts, an aspect of the U.N. which is often overlooked.

This is a quarter in which our Committee is not overlooking any aspect of the U.N. If you look at the schedules of the various Subcommittees and the Full Committee, you will see that we are having more hearings about the United Nations and its various roles in this first quarter of 2005 than in any other quarter in history. And I believe that our newly created Subcommittee on Oversight and Investigations will be spending perhaps the bulk of its time investigating the U.N., so I am not at all surprised that our Subcommittee is not left out of the picture.

I want to apologize to our witnesses. I am on two other Committees that are meeting simultaneously, and I will be in and out of this room. Behind me is Don McDonald and, since he is the brains of the outfit, having him listen is far more important than having me listen.

I thank the Chairman for the fine points in his opening statement, and I will add a few observations.

We need to be realistic about the United Nations in terms of our expectations, but I think the U.N. can be a valuable tool. The U.N. is the only general rulemaking body in the world. The Security Council is the only body that can, by a single act, bind through international law the entire world on any topic or virtually any topic it sees fit. Even states not members of the Security Council are bound, and yet that Security Council seems to be so divided as to not have played the role it should have played regarding terrorism.

Now, worldwide sanctions can be effective, and the Security Council can—its role can be illustrated when it comes to Libya, which suffered internationalized isolation mandated by the U.N., and also there was a fair amount of international cooperation on Taliban/al-Qaeda, which were under comprehensive U.N. sanctions prior to September 11th.

We can argue whether the U.N. sanctions, particularly those voted in November 2002, would have been effective had we relied upon them. Of course, that is a separate issue. But clearly the inspectors who were making it difficult for Saddam to have weapons of mass destruction and the fact we found none shows not his desire to live in peace, but his inability to piece together weapons of mass destruction while being subject to this inspection.

The lack of a universal convention against terrorism, and a universal definition of terrorism, hobbles us. There has been mentioned a problem that bedevils us, bedevils the U.N., and may be caused by the U.N., and that is this lack of definition. And the reason is that a whole group of states does not think that terrorist

acts are to be prohibited if they are part of so-called national liberation movements, by which they mean they support Arab terrorism against Israel no matter what form it takes, and no matter how focused it is on an effort to kill civilians, including young children.

I think the closest thing we have to a general prohibition of terrorism is the International Convention for the Suppression of Terrorist Bombings, one of 12 U.N. conventions against terrorism.

The Bush Administration has been urging all states to ratify these conventions. It is the centerpiece of U.N. policy when it comes to terrorism so far. It certainly makes the blowing up of pizza parlors and buses illegal, and requires states to take action against those who participate or support such activity.

Unfortunately, most Middle Eastern and Muslim states have refused to sign this convention. In fact, too many states have failed to sign.

What we see here is an anti-Israel bias in the United Nations and in the actions of many of its member states. Just last week we marked up in this Subcommittee a resolution calling on the EU to name Hezbollah a terrorist organization. It seems that when the victims are Israelis, our friends lose their compassion, forget their common sense, and ignore their principles.

It is obvious that if Hezbollah was killing any other group of civilians it would be identified as a terrorist organization by the EU, which seems to have a double standard when it comes to Israelis.

Kofi Annan has announced support for a comprehensive convention on terrorism and a universal definition, basically defining terrorism as a deliberate harming of civilians or non-combatants to affect politics. But he has failed to overcome this anti-Israel bias in so many U.N. members.

The U.N. is also correctly criticized for failure to enforce the rules that it does have, those on proliferation, human trafficking, other critical issues. Again, the fault lies so often with the member states.

Now, I realize that some states simply do not have the assets to implement the anti-terrorism effort. For those we should be working both through, and outside of, the U.N. to provide these states with the resources to do so.

But we see among these member states an unwillingness to punish violators. We see this on proliferation, we see it on terrorism. Iran has been identified as the number one state sponsor of terrorism year after year by our State Department, and yet we sit by and shrug our shoulders as our friends in Europe do business as usual with Iran, and block any effort to impose sanctions even when the nuclear bomb is being created in Iran and could be targeted at European cities as well as American.

Syria is under pressure to withdraw from Lebanon, but it has not been sanctioned for its well-documented support of terror. The one success of collective action that we can point to in the Middle East is Libya, so we see both the need and desirability of international and worldwide sanctions, and can only regret that so many member states are unwilling to apply their principles.

The Security Council's permanent members are all victims of terror. Russia has taken such a terrible toll, exemplified by the Beslan

School atrocity. The Chinese would have us believe that a huge chunk of the Uygur population are followers of bin Laden, justifying whatever China wishes to do.

So we have the opportunity to work with a Security Council that has every reason to be dedicated to stopping terrorism. We need a universal definition of terrorism, and we need to work with the U.N. while criticizing both the institution and the member states.

Finally, and I have said this in other forums, we have lost 1,500 of our finest trying to deal with one small aspect of this problem of terror and proliferation. We should be willing to interrupt business as usual with those states that trade with terrorist states, or at least be willing to hint that we might put—our trade relations might be at stake in their continued action. To do anything less is to say that the lives of 1,500 Americans are subject to sacrifice to achieve our anti-proliferation and anti-terrorist aims, but that no corporation is—the inconvenience of any corporation is something we are not willing to sacrifice for that cause, and to do so is, I think, an insult to 1,500 and more American families.

I thank the Chairman for his indulgence and I yield back.

Mr. ROYCE. Thank you, Mr. Sherman.

We will go first to Mr. Victor Comras. He has served in the U.S. Foreign Service for over 30 years, retiring in 2001 with a permanent rank of Minister Counselor. While in the State Department, he served as the first United States' envoy to the Republic of Macedonia. In May 2002, he was appointed by U.N. Secretary-General Kofi Annan to serve as one of five independent monitors, overseeing the implementation of U.N. Chapter 7 measures against al-Qaeda, and against the Taliban. His articles on economic sanctions and terrorism financing have appeared in *The Washington Post* and *Financial Times*, among other papers.

We will then go to Ms. Anne Bayefsky. She is a Senior Fellow with the Hudson Institute and a Visiting Professor at Metropolitan and Torah Colleges in New York. She has been engaged on U.N. issues for over 20 years. She served as part of Canada's delegation to the General Assembly in 1984 and 1989, and to the Human Rights Commission from 1993 through 1997. Her articles have appeared in the *Wall Street Journal*, the *Chicago Sun Times*, and other papers.

Mr. Comras, if you would like to begin.

Mr. COMRAS. Thank you, Mr. Chairman.

Mr. ROYCE. And please summarize your testimony to 5 minutes, if you will. We have all read your testimony in advance, so that will be helpful.

**STATEMENT OF MR. VICTOR D. COMRAS, ATTORNEY,  
COMRAS & COMRAS**

Mr. COMRAS. Thank you for inviting me to testify on the role of the United Nations in combatting terrorism.

I have provided a written statement that describes the actions the Security Council has taken to criminalize terrorism and to impose sanctions on terrorists. I have also described some of the weaknesses in the way in which these are administered.

I believe that the United Nations can and must do a much better job in dealing with this grave threat to national peace and security.

I would like to use my oral statement to talk about two challenging problems that I believe the U.N. must address.

The first is that the sanction regimes themselves are either too general or they are too narrowly applied, and let me explain that.

Resolution 1373 sets out to criminalize terrorism. It requires countries to take a series of punitive preventive measures against the terrorists, including freezing their assets and halting their travel, and bringing them to justice. But the absence of a clear definition of terrorism has seriously undercut this objective. Each country is free to determine for itself who it considers the terrorists, and there is no compulsion because of that. They are free to act or to choose to apply the measures as they wish. The result is a very general proscription that has produced far less results than was intended.

With the Al-Qaeda Committee (Al-Qaida and Taliban Sanctions Committee), the situation is very different. Their mandate is clearer. The problem is that it is much too narrowly applied. First of all, it is applied only to a subset of terrorists that are linked directly with al-Qaeda and the Taliban.

Second, the measures are against a very limited number of specific individuals and entities. That is good, but the list of individuals and entities is way too short. It represents only a small subset of the al-Qaeda world, and an even smaller set of the terrorist world.

There are at least two steps that the United Nations can and should take to deal with these weaknesses. First, it is imperative that the Security Council act quickly to pass a clear definition of terrorism. I do not believe it requires them to wait for a comprehensive convention. I think that the Security Council itself can do the job by defining terrorism within the scope of 1373, and applying that within the realm of 1373.

As far as the Al-Qaeda Committee is concerned, I think they have got to push countries to provide more names. That list has to grow to become a clearer picture of the al-Qaeda that we all know. And if countries will not come forward with the names, then other international agencies and enforcement groups ought to be authorized to surface names for the Al-Qaeda Committee to consider.

The second major problem is the lack of accountability. Neither the Al-Qaeda Committee nor the Counter-Terrorism Committee has an effective compliance mechanism. They cannot even compel countries to provide reports on the actions they are taking to implement the sanctions measures.

I served for 2 years as one of five international monitors appointed by the Secretary-General to oversee the U.N. sanctions on al-Qaeda and associated groups, and during this period we provided the Security Council with a series of hard-hitting reports that described the actions that were being taken, or not being taken, by the countries that we visited and studied.

Our ability to "name and shame" caused several countries to take necessary remedial action. I was surprised and chagrined when the Security Council and the Al-Qaeda Committee, instead of addressing the problems that we identified, simply decided to allow our mandate to lapse. We were replaced by a more pliant analytical

team that works directly for, and under the close supervision of, the Al-Qaeda Committee.

I want to make it clear that I had already announced my intention to withdraw from the monitoring group so I had no personal stake in this outcome, but I think it was a big mistake. It deprived the Security Council of the only real mechanism it had to “name and shame” countries, and to hold them accountable.

I believe that it is very important that the Security Council act quickly to reconstitute an independent monitoring group. Such a watchdog group would bring increased transparency and credibility to the sanctions enforcement process. It would also place increased pressure on countries to comply with the sanctions measures. I have spelled out in my written statement some of the attributes that I believe such a group should possess.

The Al-Qaeda Committee, and the Security Council itself, will never truly be in a position to question specific countries about their failures. There is just too much diplomatic and political baggage involved in their initiating such inquiries or findings.

I have run out of time so I will leave for my written statement the other major points, but I thank you very much for this opportunity, Mr. Chairman.

[The prepared statement of Mr. Comras follows:]

PREPARED STATEMENT OF MR. VICTOR D. COMRAS, ATTORNEY, COMRAS & COMRAS

Thank you for inviting me to provide you my views on the role of the United Nations in combating terrorism. This is both a timely and complex issue. The United Nations is the essential organization in international affairs. It is the forum where the international community comes together to interact and to provide the legal, moral and political basis for international action.

Last week UN Secretary General Kofi Annan outlined for the United Nations what he termed a new “principled, comprehensive strategy to fight terrorism globally.”<sup>1</sup> He was responding to the recommendations of a High Level Panel established last year that addressed “threats, challenges, and changes” facing the organization.<sup>2</sup> High on its list of findings was the inadequate United Nations response to international terrorism. The report found that the United Nations “has not made the best use of its assets in the fight against terrorism and needs to articulate an effective and principled counter-terrorism strategy.”

The United Nations Charter provides a very broad mandate for treating issues that threaten international peace and security. And terrorism is certainly one of the gravest threats to international peace and security in our time. The new strategy outlined by the Secretary General would engage the broad spectrum of UN organs, including the Secretariat, the Security Council, the General Assembly, and many of the UN subsidiary and specialized agencies. It would seek to:

- Dissuade disaffected groups from choosing terrorism as a tactic to achieve their goals;
- Deny terrorists the means to carry out their attacks;
- Deter States from supporting terrorists;
- Develop State capacity to prevent terrorism; and
- Defend human rights in the struggle against terrorism.

The Secretary General also placed great emphasis on the need to develop an international binding definition of terrorism that would provide the basis for a common commitment to act against all persons and entities that engage in terrorism. The absence of such an agreed definition has provided many countries plenty of “wiggle

<sup>1</sup>UN Secretary General outlined a new UN Strategy on Terrorism in a speech he delivered on March 10, 2005 at the Madrid International Summit on Democracy, Security and Terrorism. His remarks can be found on the conference website at <http://english.safe-democracy.org/key-notes/a-global-strategy-for-fighting-terrorism.html>

<sup>2</sup>Report of the Secretary General’s High Level Panel on Threats, Challenges and Change December 2, 2004

room” to avoid taking on their international responsibilities in this regard. The definition put forth by the Secretary General, and the High Level Panel, is simple and straightforward. “Any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non combatants, with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act.” The Secretary General made achieving such an agreed definition a pillar of his new strategy.

These are lofty and difficult goals, and their realization should be supported and assisted by all of us. But, these goals can only be reached if the United Nations is willing to do some of the things it does, differently. The devil will be in the details, and developing the necessary political consensus to adopt these measures may prove quite difficult. Beyond that, the UN must find new ways to hold its members accountable when they fail to comply with any new or existing measures. Unfortunately, the United Nations has not always been successful in this regard.

#### BACKGROUND

The United States has looked to the Security Council long and often to coordinate an international response to terrorism. Numerous attempts were made during the 1980’s and 1990’s to engage the United Nations in a meaningful campaign against State supported terrorism. But only limited measures were adopted. Terrorism was viewed as a highly political issue, lacking precise definition. Many of the groups that we knew to be terrorists were viewed by others as “freedom fighters.” It proved exceedingly difficult to gain an international consensus on these issues.<sup>3</sup>

The 1998 bombing of our embassies in Kenya and Tanzania gave rise to new efforts to engage the United Nations in combating terrorism. These attacks made it clear that, with al Qaeda, a new brand of terrorism was at work that knew no boundaries. Starting in August 1998 the Security Council began to pass a series of resolutions aimed at placing increased pressure on the Taliban, which controlled Afghanistan where al Qaeda had encamped, to turn over Osama bin Ladin and to close these terrorist camps.<sup>4</sup> When the Taliban refused to comply, sanctions were imposed.<sup>5</sup> The Security Council also set up a special Committee of its members—the so-called 1267 Committee—to administer these sanctions measures.

Following the 9/11 terrorist attack, the United States again turned to the Security Council to galvanize an international response to terrorism. Two new resolutions were passed—1373<sup>6</sup> and 1390<sup>7</sup>—to secure broad international action against terrorism. The former—1373—required all countries to criminalize terrorism and to freeze the funds of those involved in terrorist acts. It also directed all countries to afford one another the “greatest measure of assistance” in tracing down terrorists and investigating terrorist acts. A Counter-terrorism Committee was established to serve as both a resource to assist member countries in drafting new laws and regulations to combat terrorism and as a platform for mutual assistance and international cooperation in tracking down and prosecuting terrorists.<sup>8</sup>

The second resolution—1390—was passed to re-enforce earlier sanctions measures against al Qaeda and the Taliban. It required all countries to impose them against designated al Qaeda members and supporters. A Consolidated list of designated individuals and entities is maintained by the Al Qaeda and Taliban Sanctions Committee (The Al Qaeda Committee).<sup>9</sup> All countries are obligated to freeze their assets, deny them economic resources and cut off their funding. They are also required to inhibit their travel and to curb their access to weapons and explosives. An independent Monitoring Group was also established to assist the work of the Al Qaeda Committee and to oversee and report on what countries were actually doing to carry out these measures.<sup>10</sup>

<sup>3</sup>See Luck, Edward C., *Global Terrorism and the United Nations, A Challenge in Search of a Policy*, A United Nations Foundation Paper 2004

<sup>4</sup>See UN Security Council Resolutions S/Res 1189 (1998) and S/Res 1214 (1998).

<sup>5</sup>See UN Security Council Resolutions S/Res 1267 (1999) and S/Res 1333 (2000)

<sup>6</sup>S/Res 1373 (2001)

<sup>7</sup>S/Res 1390 (2002)

<sup>8</sup>The UN Counter Terrorism Committee maintains a website at <http://www.un.org/Docs/sc/committees/1373/>

<sup>9</sup>The United Nations Consolidated List Of Individuals And Entities Belonging To Or Associated With The Taliban And Al Qaida Organization As Established and Maintained by the 1267 Committee is maintained on the Al Qaeda Committee’s website at <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>

<sup>10</sup>The Al Qaeda Sanctions Monitoring Group was established with an independent mandate by S/Res 1363 (2002). Its mandate was renewed and expanded by S/Res 1390 (2002) and S/Res 1455 (2003)

Subsequently, the Security Council adopted several other resolutions aimed at amending or strengthening the measures against al Qaeda and terrorism. They also sought to enhance the roles played by the Counter Terrorism and the Al Qaeda Committees.<sup>11</sup> The Security Council also created two additional bodies—a working group to consider further measures against Al Qaeda,<sup>12</sup> and new committee to address the growing risk of terrorists acquiring weapons of mass destruction.<sup>13</sup> So, there are now at least four separate Security Council Committee dealing with terrorism.

#### MAKING THE UN RESPONSE MORE EFFECTIVE

My past work has been most closely tied to the work of the Al Qaeda and Taliban Sanctions Committee, so I will address that first.

In my view the Al Qaeda and Taliban Sanctions Committee has fallen short in motivating and policing the full implementation of its sanctions measures. This is due, in part, to the sheer difficulty countries have in implementing these measures. Many countries simply lack the resources necessary to enforce them. Some lack the political will. But, there are several other reasons also that this has not been as effective as hoped.

First of all the sanctions administered by the Al Qaeda Committee are much too narrowly applied. They pertain only to the very short list of designated al Qaeda individuals, entities and associates maintained by the Committee. That list defines the persons and entities that are the target of the sanctions. It contains the names of only 179 Al Qaeda members and associates.<sup>14</sup> During the last year only 26 names new names of individuals were added.<sup>15</sup> Those not on the list escape the application of the sanctions measures. They remain able to cross borders, acquire arms and seek financing.<sup>16</sup>

While the Al Qaeda and Taliban Sanctions Committee has an important role in maintaining and updating this list, neither the Committee, nor its new Analytical and Monitoring Team have any authority to recommend names for consideration. The Committee can act only after a member country has provided the name, and supporting information, to the Committee for listing. And many countries are reluctant to forward to the committee the names of their nationals or residents. Only a very few countries have actually provided any names for listing.<sup>17</sup>

Noting these deficiencies, Russia, following the Beslan atrocity, won passage of a new UN resolution<sup>18</sup> in October 2004, calling on all countries to take the United Nation's counter-terrorism measures more seriously. The new resolution established a new working group of Security Council members to study possible additional sanctions measures to combat terrorism. One area of focus will be to consider new measures that can have an impact on al Qaeda members or associates—whether or not their names are on the UN Consolidated list. Unfortunately, this working group seems to be dead in the water. It has not met for some time, and little progress is foreseen in the near future.

Another problem is that the Al Qaeda Committee really has no means to compel compliance or action from any state with regard to the sanctions measures. For example, the Security Council passed successive resolutions calling on all member countries to submit detailed reports to the Al Qaeda and Taliban Sanctions Committee on what they were doing to implement the sanctions measures. Some 60 countries failed to respond. And many of the responses that were received were little more than pro-forma and of no real value. There is simply too little pressure on

<sup>11</sup> See UN Security Council Resolutions S/Res 1455 (2003), S/Res 1526 (2004), and S/Res 1535 (2004)

<sup>12</sup> Security Council Resolution S/Res 1566 established a new Security Council Working Group “to consider and submit recommendations to the Council on practical measures to be imposed upon individuals, groups or entities involved in or associated with terrorist activities. . . .”

<sup>13</sup> S/Res 1540 (2004)

<sup>14</sup> The Consolidated list also includes 143 names of members of the taliban, and 114 entities that have been associated with al Qaeda.

<sup>15</sup> See Report of the Al Qaeda Committee's Analytical and Monitoring Team dated February 15, 2005

<sup>16</sup> There is a limited residual responsibility stemming from S/Res 1373 to deal with terrorists not on the Consolidated List, but this process is onerous and rarely applied. As discussed below, it requires a prior judicial finding of culpability associated with a terrorist act.

<sup>17</sup> The United States has been associated with the submission of almost 80% of the names on the UN Consolidated list

<sup>18</sup> S/Res 1566 (2004)

countries to report on their counter-terrorism activities, and no consequences are attached to their failure to comply.<sup>19</sup>

As I mentioned above, many countries continue to lack the legal, technical and logistical ability to impose the indicated sanctions measures, or to adequately police and enforce them. And each country is free to interpret the sanctions in accordance with its own jurisprudence. These are not just problems in developing countries. They extend, in some measure, to all countries. Several countries in Western Europe, for example, are still not able to freeze assets other than bank accounts. And in many cases they cannot even freeze accounts shared with others.<sup>20</sup> This has permitted many designated al Qaeda financiers and financial facilitators, such as Youssef Nada, Ahmed Idriss Nasreddin, and Yassin al Qadi, to carry on their worldwide business activities.<sup>21</sup>

I am also concerned that the Committee has not established a practice of following up on implementation issues brought to its attention. There has been little dialogue between the committee and other countries. And only a few countries have referred issues to the committee for interpretation, advice, or resolution. Even in these cases, the response time was very long and the answers very general. I can see no indication that the committee has ever followed up with any country concerning matters brought to its attention by the monitoring group.

The committee has been much to reticent to criticize any member country for failing to do comply with the sanctions or to due its part in enforcing them. It did away with its only "name and shame" tool when it dismissed the independent monitoring group, on which I served, after our group issued a critical report that identified several specific failings and singled out countries whose actions did not conform to the sanctions measures.<sup>22</sup> For two years we provided the committee and the public detailed reports of country action and inaction.<sup>23</sup> These reports, I believe, helped stimulate several countries to take corrective measures.

The dismissal of the Monitoring Group in January 2004, I believe, was a detrimental step to the work of the Al Qaeda and Taliban Committee. And it is hard for me to understand why the United States supported this decision. Those in charge may have believed that they were strengthening the measures by transferring the monitoring responsibility directly to the al Qaeda and Taliban Sanctions committee itself. But this committee has the same members as the Security Council. It is a very political body. Its actions and decisions are often governed by diplomatic and political factors. Such factors have clearly constrained the committee from naming or shameing any member country. It has never done so.

Following the termination of the Monitoring Group, the Security Council and its Al Qaeda and Taliban Sanctions Committee wasted some 5 critical months in putting together a new monitoring mechanism to oversee country implementation. The new Analytical and Monitoring Team did not actually begin working until May 2004.<sup>24</sup> And, from the beginning its work has been hampered by the absence of an independent mandate. Its ability to operate is subject to close political scrutiny by the Al Qaeda and Taliban Sanctions Committee and its members. This includes control over its work program and its ability to garner information through confidential non-government sources. In fact, the new group is required to notify, in advance, each country it plans to visit, and to divulge its sources and information to every

<sup>19</sup>On several occasions Ambassador Heraldo Munoz, who was then Chairman of the Al Qaeda Committee told the Press that the Committee would act to "do more than 'name and shame' those countries that failed to report see, for example New Service wire report by Masood Haider dateline United Nations New York, January 31, entitled :UN Sets Deadline for Reports on Terror." The Official UN Press Conference Briefing for February 9, 2004 states that " the Committee would circulate a list of countries that had not met the requirement with an analysis of reasons why." This was finally done in a letter from Chairman Munoz to the Security Council on April 27th, 2004 (UN Doc S/2004/349). This letter generated no further action on the part of the Security Council.

<sup>20</sup>See UN Doc S/2003/1070 Second Report of the Monitoring Group Established Pursuant to Resolution 1363 (2001) Annex VI, The Analysis of State's Reports Pg 12

<sup>21</sup>See Isikoff, Michael and Hosenball, Mark, Terror Watch, 'Nobody's Nagging,' Why the United States is Losing the Battle Against Financiers of International Terrorism, Newsweek Magazine, March 3, 2004.

<sup>22</sup>See UN Doc S/2003/1070 Second Report of the Monitoring Group Established Pursuant to Resolution 1363 (2001) dated December 3, 2003

<sup>23</sup>The Reports of the Al Qaeda Monitoring Group continue to be maintained on Al Qaeda Committee's website and can be found at <http://www.un.org/Docs/sc/committees/1267/1267mg.htm>

<sup>24</sup>The new members were finally appointed in late march 2004, but were only able to gather and begin work in May 2004.

country that it wishes to discuss in its report. Its work is subject to the committee's direction, review, alteration and amendment.<sup>25</sup>

This process has made the new team highly vulnerable to political and other pressures. And the results are clear. The first two published reports of the new Analytical and Monitoring team provide no new insights into the challenges faced in implementing the sanctions resolutions. There is no follow-up to the information contained in the previous Monitoring Group reports, and there is not one line in its reports that could be construed as a specific criticism directed at any country.<sup>26</sup>

I believe that it is very important that the Security Council reconstitute an independent watchdog or monitoring group to oversee what countries are actually doing, or not doing, to implement effectively the measures against al Qaeda. Such a group would bring increased transparency and credibility to the sanctions enforcement process. It would also place increased pressure on countries to comply with the sanctions measures. The al Qaeda and Taliban Sanctions Committee and the Security Council itself, will never be in a position to truly question what specific countries are doing in this regard. There is just too much diplomatic and political baggage involved in their initiating such inquiries or findings.

The watchdog group that I would envisage would include 8 to 10 senior experts or statesmen appointed for terms of from three to five years to oversee the implementation of the al Qaeda and Taliban sanctions. Their work would be supported by an independent staff that answered only to them. Their authority would derive from the Security Council pursuant to Chapter VII of the UN Charter. They would report directly to the Security Council on a periodic basis, but no less than quarterly. These reports would be public. The reports would include their own independent assessment concerning the implementation of the sanctions measures along with recommendation to improve their effectiveness. These experts would be beholden to no country. Their views would not be ascribed to any country avoiding the political and diplomatic pitfalls when one country appears to investigate or question another. The Security Council would be free to discuss, debate, and even question their findings. In this way all countries would be on notice that their actions or inactions may well come under close public international scrutiny. I can think of no other, more effective method to introduce some teeth to international sanctions enforcement.

The watchdog group could also fulfill other important functions such as proposing further names for designation. The Group would also remain cognizant of the problems they had raised and would be in a good position to provide the Al Qaeda and Taliban Sanctions Committee and the Security Council an independent assessment of any remedial action taken to address them. This would provide the crucial follow-up that is now missing.

Let me turn my attention now to the second major part of this UN combating terrorism equation—Resolution 1373 and the Counter Terrorism Committee.

The Counter-Terrorism Committee established by resolution 1373 was initially envisaged as the principal United Nations platform for engaging a broad international response to terrorism. It sought to put in place a new standard for national action and international cooperation in combating terrorism. The aim was to ensure that any person participating in the financing, planning, preparation or perpetration of terrorist acts, or materially supporting terrorist acts, would be brought to justice.<sup>27</sup>

The 1373 resolution provides a very important foundation for international cooperation. It sets forth a clear international legal basis on which the United States and other countries can request and obtain foreign investigative and judicial assistance. But this route has proved more difficult than anticipated and has been used quite sparingly. The United States, and most other countries have preferred to handle such requests through more discrete bilateral channels.<sup>28</sup>

<sup>25</sup>The conditions by which the new Al Qaeda Monitoring and Analytical Team must abide are spelled out in the Annex attached to S/Res 1526 (2004)

<sup>26</sup>See UN Doc S/2004/679, First Report of the Monitoring Team dated August 25, 2004, and UN Doc S/2005/83, Second Report of the Monitoring Team dated 15 February 2005. Both reports are maintained on the Al Qaeda Committee's website at <http://www.un.org/Docs/sc/committees/1267/1267mg.htm>

<sup>27</sup>See Statement by Ambassador James B. Cunningham, Deputy United States Permanent Representative to the United Nations, on the Report of the Counter Terrorism Committee, in the Security Council, October 16, 2003, USUN Press Release No 179 (03) 16 October 2003

<sup>28</sup>See Luck, Edward C., Global Terrorism and the United Nations, A Challenge in Search of a Policy, A United Nations Foundation Paper 2004

Unfortunately, 1373 has not resulted in very many freezing actions or seizures of funds associated with international terrorism.<sup>29</sup> Unlike the Al Qaeda Sanctions Committee, the Counter-Terrorism Committee does not have a centralised list of persons and entities to which the resolution 1373 applies. It is left to each country to determine for themselves who such persons and entities are. Few countries other than the United States have the authority to act administratively in such matters. In most cases judicial findings linking the culprits directly to specific terrorist acts are a precondition for such action. This can require open court evidentiary hearings that risk compromising intelligence sources and methods. And, still today, there are many countries that refuse to treat certain terrorist groups, such as Hamas and Hezbollah, or their members, for what they really are.

The Counter Terrorism Committee has had somewhat more success in soliciting reports from countries on their national laws, regulations and procedures related to terrorists or acts of terrorism. It enlisted panels of experts to review these laws and to make recommendations concerning their efficacy and conformity to new international norms. In many cases this developed into a dialog between these experts and the countries in question.<sup>30</sup> The process also helped identify shortcomings and assistance requirements. While the process got off to a good start, it faltered as the CTC experts could not follow-up or determine if countries were actually taking steps to correct deficiencies or to implement the 1373 provisions in their laws. After two intensive years of operation, the process petered out. The experts drifted away, and the CTC lost its focus. It was clear that a new effort was needed to regenerate the Counter Terrorism Committee.<sup>31</sup>

In March 2004 the Security Council adopted resolution 1535 with the intent to “revitalize” the Counter terrorism committee.<sup>32</sup> It created within the UN Secretariat a new Counter Terrorism Executive Directorate (CTED) that would serve as a new expanded professional staff to assist the committee in its work. The resolution also directed new efforts to facilitate the provision of international assistance to countries lacking the resources to carry out their counter terrorism obligations. Unfortunately, recruitment for this new professional support staff has proceeded at a snail’s pace, and most of these positions still remain vacant.

The new focus of the CTC appears to be that of an assistance broker identifying needs and matching countries to programs.<sup>33</sup> It is not fully clear to me why this broker role is necessary. Most regional and international organizations already have mechanisms in place to identify and adapt assistance programs to needs that fall within their functional or regional scope. I would hope that the Secretary General will be able to put the CTC to good use in carrying forth his new Global Anti-Terrorism Strategy.

There is also some talk of giving the Counter Terrorism Committee and the CTED an increased role in terrorism sanctions enforcement. In my view the group is ill-suited to taking on such a role. The UN Secretariat has little grounding in counter-terrorism expertise. And secretariat hiring procedures may not be conducive to putting together the needed secure expert human resource base. Few countries are willing to channel sensitive intelligence and investigative information through such a group. Enforcement is better left to more discrete national and regional operations. This was the case, for example, during the Bosnian War. The United Nations had to be convinced to turn over implementation of the Serbian sanctions to regional enforcement groups. Once it did turn them over the sanctions became the most successful in UN history.

There is not much that can be said yet concerning the new 1540 weapons of mass destruction group. It has a very important mandate—for the international community must do everything that it can to keep weapons of mass destruction out of the hands of terrorists. This group has not yet really begun its work. Its first task is to provide guidelines for countries to provide reports on what they are doing to protect sensitive materials, hardware and technology. One can only hope that all countries respond to this call and that they provide reports more meaningful than those submitted to the Al Qaeda committee. I also hope that this new committee will chose to take a more active role in holding countries accountable.

Thank you for giving me this opportunity to appear today.

<sup>29</sup> Almost all the funds reported as frozen relate to listed Al Qaeda or Taliban individuals or entities pursuant to resolution S/Res 1390 and its successor resolutions—S/Res 1455 (2003) and S/Res 1526 (2004)

<sup>30</sup> See Cortright, David, “Can the UN Battle Terrorism Effectively?”, USA Today Magazine, January 2005

<sup>31</sup> *id.*

<sup>32</sup> S/Res 1535 (2004)

<sup>33</sup> See UN Doc S/2005/22 Annex, “Work Programme of the Counter-Terrorism Committee (1 January–31 March 2005”

Mr. ROYCE. Thank you very much for your testimony.  
Ms. Bayefsky.

**STATEMENT OF MS. ANNE BAYEFISKY, SENIOR FELLOW,  
HUDSON INSTITUTE**

Ms. BAYEFISKY. Thank you very much for inviting me.

I am going to come to a somewhat different conclusion, which is that the United Nations has had a serious negative influence on the ability to fight the war on terrorism, and that cutting the battle loose from the U.N. framework may, in fact, be necessary for the war to be won.

The key problem, it seems to me, or obstacle to the ability of the U.N. to play a constructive role in countering terrorism, is the absence of an internationally agreed definition. Without a definition of terrorism, literally, U.N. states operate with impunity in parallel universes. In this environment, for example, state sponsors of terrorism like Syria have no hesitation in claiming they are committed to fighting to terrorism.

But if one looks closely at the Arab Terrorism Convention or the Terrorism Convention of the Organization of the Islamic Conference, they say quite clearly that terrorism is defined to exclude armed struggle for liberation and self-determination. In other words, blowing up certain civilians is beyond the reach of international law and organizations.

The result is the contamination of U.N. action in the anti-terrorism context on every level from the adoption and implementation of resolutions to the drafting of new conventions and to the application of the rules of self-defense.

It is true that the December report of the high-level panel of the U.N., which the Secretary-General initiated, recommended that a definition of terrorism be adopted—a definition which would reject the OIC position—but it is subject to a huge caveat, namely, that a definition of terrorism be adopted by the General Assembly by consensus, which at this point in time is simply not possible.

The inversion of principles in the U.N. context is obvious, for example, in the resolution called Human Rights and Terrorism adopted annually by the General Assembly and the U.N. Commission on Human Rights. It is a resolution which, because—among other things—it incorporates by reference the Arab and OIC Terrorism Conventions' definitions, is actually adopted over the objection of virtually all Western democratic states.

A comprehensive convention on terrorism has been stymied for the same reason, basically on the same issue of the general inability to define terrorism. The high-level panel suggests that a comprehensive convention be adopted, but again it says this has to happen by consensus, and to date, no state has any intention of moving forward to adopt such a convention in the absence of consensus.

This is not an academic problem. The lack of a definition of terrorism disables the U.N. from fair and nonselective criticism of terrorist acts. There are many contexts in which this occurs. The Security Council, for example, has no problem dealing with terrorist incidents in Indonesia and Russia, but it is unable to deal in the same way with terrorist incidents in Israel. As recently as a month

ago, in the context of the terrorist attack in Tel Aviv, it was impossible to have a resolution or a presidential statement from the Security Council because Algeria objected, and the Security Council governed itself by the rule of consensus.

Furthermore, I think that the U.N. implementation mechanisms have proved inadequate. The Counter-Terrorism Committee (CTC), for example, has 75 reports backlogged. It only deals with approximately 10 a month. It poses questions to countries, but these questions—which might exhibit some degree of criticism—are confidential, so there is no naming and shaming going on. The CTC has never named a single terrorist organization, individual terrorist or state sponsor of terrorism.

Yes, visits are planned to countries, but they are countries which have consented to the visit, and it is quite clear that the CTC will stay away from the hard cases and focus only on merely facilitating reporting and providing technical assistance to countries that are willing, but unable, to comply with Security Council Resolution 1373.

In fact, the U.N. goes further. It not only fails to condemn acts of omission, but in fact it gives a green light to terrorists. The Commission on Human Rights annually—for the last 3 years—has adopted a resolution which actually supports suicide bombing by incorporating by reference to a 1982 General Assembly resolution which specifically accepts the legitimacy of the struggle against foreign occupation by all available means, including armed struggle.

Even the U.N.'s highest judicial organ, the International Court of Justice, has conveyed a similar message. I simply point out that the rules accepted by the International Court of Justice dealing with the Israeli security fence have profound implications for the United States.

At the end of the day, through the United Nations, we have lost the battle to focus on the human rights argument in defense of the war against terrorism. That has served to undermine, via the United Nations, the success of the war against terrorism.

Thank you.

[The prepared statement of Ms. Bayefsky follows:]

PREPARED STATEMENT OF MS. ANNE BAYEFSKY, SENIOR FELLOW, HUDSON INSTITUTE

THE DEFINITION OF TERRORISM

A key obstacle to the ability of the United Nations to play a constructive role in countering terrorism is the absence of an internationally agreed definition. Without defining terrorism UN states operate with impunity in parallel universes.

In July 2004, the Security Council held an open debate about the work of the Counter Terrorism Committee (CTC)—a Committee created in the wake of the events of September 11, 2001 and composed of all Security Council members. The Syrian representative told the Council “Syria reiterate(s) its deep commitment to the fight against terrorism and . . . pledges its continued cooperation with the relevant organs of the United Nations working to eradicate that scourge.”<sup>1</sup> Syria, however, is on the U.S. State Department list of state sponsors of terrorism and plays host to Hamas (the Islamic Resistance Movement), The Popular Front for the Liberation of Palestinian (PFLP), Palestinian Islamic Jihad, and The Popular Front for

<sup>1</sup>Milad Atieh, Press Release SC/8152, 19 July 2004, page 7, [www.un.org/News/Press/docs/2004/sc8152.doc.htm](http://www.un.org/News/Press/docs/2004/sc8152.doc.htm)

the Liberation of Palestine—General Command (PFLP–GC), all designated by the State Department as foreign terrorist organizations.<sup>2</sup>

Similarly, a Syrian report submitted to the CTC in July 2003<sup>3</sup> explains that various laws<sup>4</sup> codify “the procedures and measures adopted and in force in the Syrian Arab Republic aimed at the suppression. . . . and prevention of terrorist crimes, and . . . the denial of safe haven, refuge, assistance or any form of help in the territory of . . . Syria”.<sup>5</sup> But a closer look at these laws, such as the Arab Convention on Judicial Cooperation, indicates that primary legal authority rests with Sharia or public policy in that country, and any moves to the contrary are unenforceable.<sup>6</sup>

The Arab Terrorism Convention and the Terrorism Convention of the Organization of the Islamic Conference (OIC) are both repeatedly invoked before the CTC, and define terrorism to exclude “armed struggle for liberation and self-determination.”<sup>7</sup> This claim purports to exclude blowing up certain civilians from the reach of international law and organizations. It is central to interpreting every statement that Arab and Islamic states, which have ratified these conventions, make in any UN fora purporting to combat terrorism.

The result is the contamination of UN action in the counter-terrorism context on every level from the adoption and implementation of resolutions, to the drafting of new conventions, to the application of the rules of self-defense.

The December Report of the High-level Panel on Threats, Challenges and Change recommended a definition of terrorism which would reject the OIC position, but which was subject to a huge caveat. In their words, “we believe there is particular value in achieving a *consensus* definition within the General Assembly, given its unique legitimacy in normative terms . . . .”<sup>8</sup>—a recipe for stalemate.

#### GENERIC RESOLUTIONS

An example of UN inversion of principles in the terrorism context is the now annual resolution of the General Assembly and UN Commission on Human Rights called “human rights and terrorism.”<sup>9</sup> At the last General Assembly the resolution was sponsored by such countries as China, Cuba, Sudan and Zimbabwe.<sup>10</sup> The

<sup>2</sup>U.S. Department of State, Patterns of Global Terrorism, April 29, 2004, [www.state.gov/s/ct/rls/pgtrpt/2003/31644.htm](http://www.state.gov/s/ct/rls/pgtrpt/2003/31644.htm); Fact Sheet, Foreign Terrorist Organizations, December 29, 2004, <http://www.state.gov/s/ct/rls/fs/2004/37191.htm>; The Leading Palestinian Terrorist Organizations (August 2004), Intelligence and Terrorism Information Center at the Center for Special Studies (C.S.S.), <http://www.intelligence.org.il/eng/sib/8—04/pto.htm>

<sup>3</sup>S/2003/725, 18 July 2003, <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/437/01/PDF/N0343701.pdf?OpenElement>; first report, S/2001/1204, 14 December 2001; second report, S/2002/1046, 19 September 2002

<sup>4</sup>The 1983 Convention on Judicial Co-operation between States of the Arab League (the “Riyadh Convention”) and the Model Treaty on Exhibition adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990).

<sup>5</sup>S/2003/725, 18 July 2003, para. 1.10

<sup>6</sup>The Riyadh Convention permits a Recipient State (the signatory) to refuse to recognise the judgment of the courts of an Originating State where the judgment is contrary to Islamic law or the Constitution or public order of the Recipient State.

<sup>7</sup>The Arab Convention for the Suppression of Terrorism, Adopted by the Council of Arab Ministers of the Interior and the Council of Arab Ministers of Justice, Cairo, 22 April 1998, “Article 2(a). All cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law, shall not be regarded as an offence. This provision shall not apply to any act prejudicing the territorial integrity of any Arab State.” Convention of the Organisation of the Islamic Conference On Combating International Terrorism, “Article 2 (a). Peoples’ struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime.” adopted at Ouagadougou, Burkina Faso, on 1 July 1999.

<sup>8</sup>A/59/565, 2 December 2004, “A more secure world: our shared responsibility”, Report of the High-level Panel on Threats, Challenges and Change, para. 163, p. 48.

<sup>9</sup>General Assembly Resolution A/RES/58/174, Human rights and terrorism, adopted 20 December 2004, 127 votes to 50, with 8 abstentions. Commission Resolution, 2004/44. Human rights and terrorism, adopted 19 April 2004, 31 votes to 14, with 8 abstentions.

<sup>10</sup>At the 2004 Commission the sponsors were: Algeria, Bangladesh, China, Colombia, Congo, Côte d’Ivoire, Cuba, Ecuador, Egypt, Eritrea, Ethiopia, Gabon, India, Indonesia, Kenya, Madagascar, Mali, Mauritania, Nicaragua, Nigeria, Oman, Pakistan, Philippines, Qatar, the Russian Federation, Saudi Arabia, Senegal, Sri Lanka, the Sudan, Swaziland, Togo, Tunisia, Turkey, Uganda, Viet Nam and Zimbabwe.

At the 2004 General Assembly the sponsors were: Algeria, Azerbaijan, Belarus, Burundi, Cameroon, the Central African Republic, China, Colombia, the Congo, Cuba, the Dominican Republic, Ecuador, El Salvador, Eritrea, Ethiopia, Fiji, Guinea-Bissau, India, Indonesia, Kazakhstan, Kyrgyzstan, Madagascar, Nigeria, Pakistan, Peru, the Philippines, the Republic of

Continued

human rights and terrorism resolutions incorporate by reference regional conventions such as the Arab and OIC Terrorism Conventions or similar pronouncements, like the 2003 “commitment” of the heads of state and government of the Non-Aligned Movement<sup>11</sup> “to fight terrorism.” This commitment includes the following:

“The Heads of State or Government . . . reaffirmed the Movement’s principled position under international law on the legitimacy of the struggle of peoples under colonial or alien domination and foreign occupation for national liberation and self-determination, which does not constitute terrorism.”<sup>12</sup>

For this and other reasons, the resolution on human rights and terrorism is adopted by the Commission and the General Assembly only over the objection of virtually all Western democratic states.<sup>13</sup>

#### A COMPREHENSIVE TERRORISM CONVENTION

The definitional impasse has now stymied further codification. For many years, a working group of the Sixth Committee of the General Assembly has been attempting to conclude a Comprehensive Convention on International Terrorism. Even in the immediate aftermath of 9/11 it failed to adopt the Convention, and the deadlock continues to this day. The reason is very clear. On the one hand, stands the formal proposal of the Organization of the Islamic Conference. It seeks to add a paragraph stating “The activities of the parties during an armed conflict, including in situations of foreign occupation . . . are not governed by this Convention.”<sup>14</sup> Or, as the Syrian delegate described the standoff “it emphasized the need for a clear definition distinguishing terrorism from the legitimate struggle of peoples against foreign occupation and alien domination.”<sup>15</sup> And on the other hand stands the opposition of the Coordinator representing everyone else.<sup>16</sup> The High-level Panel on Threats, Challenges and Change recommended “that it [the General Assembly] should rapidly complete negotiations on a comprehensive convention on terrorism” but only by consensus.<sup>17</sup> To date, no state has any intention of moving forward by operating without consensus.

The absence of an internationally agreed-upon definition of terrorism is not an academic problem. It disables the UN from fair and non-selective criticism of terrorist acts.

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Moldova, the Russian Federation, Senegal, Sri Lanka, the Sudan, Swaziland, Tajikistan, Togo, Tunisia, Turkey, Ukraine, the United Republic of Tanzania, Uzbekistan, Venezuela, Viet Nam, and Zimbabwe.

<sup>11</sup>The Non-Aligned Movement is described on its website as a Movement representing the interests and priorities of developing countries. For the list of about 115 member states see: <http://www.nam.gov.za/background/members.htm>. See: “Noting the initiatives introduced since its previous session on the question of human rights and terrorism at the international, interregional and national levels, as shown by the commitment made by the Movement of Non-Aligned Countries to fight terrorism, as expressed by the XIII Conference of the Heads of State and Government of the Non-Aligned Movement, held in Kuala Lumpur in February 2003,” Commission on Human Rights Resolution 2004/44, 19 April 2004.

<sup>12</sup>A/57/759-S/2003/332, 18 March 2003, see paragraphs 106, 108, 115.

<sup>13</sup>Voting against at the 2004 General Assembly were: Albania, Andorra, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Federated States of Micronesia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Monaco, Netherlands, New Zealand, Norway, Palau, Poland, Portugal, Republic of Korea, Romania, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, United Kingdom, United States.

At the 2004 Commission on Human Rights voting against were: Australia, Austria, Croatia, France, Germany, Hungary, Ireland, Italy, Japan, Netherlands, Republic of Korea, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

<sup>14</sup>A/57/37, Annex IV, Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of 17 December 1996; see also A/C.6/58/WG.2/CRP.2, Annex II, 8 October 2003.

<sup>15</sup>A/C.6/58/WG.2/CRP.2, Annex III, paragraph 1, 8 October 2003.

<sup>16</sup>A/57/37, Annex IV, Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of 17 December 1996; see A/C.6/58/WG.2/CRP.2, Annex II, 8 October 2003; and see A/C.6/59/L.10, 8 October 2004 : “The basic reference texts for article 18 were the text circulated by the former coordinator and the text proposed by member States of the Organization of the Islamic Conference (OIC). . . . Finding an agreement on article 18 remains key for reaching overall agreement on the draft comprehensive convention.”

<sup>17</sup>A/59/565, 2 December 2004, “A more secure world: our shared responsibility”, Report of the High-level Panel on Threats, Challenges and Change, para. 163, p. 48.

## SPECIFIC RESOLUTIONS OF CONDEMNATION

Contrast the UN response to terrorist incidents in Indonesia or Russia with terrorism in Israel.

In the case of October 2003's hostage-taking crisis in Moscow, the Security Council adopted a resolution condemning the terrorist attack within 24 hours.<sup>18</sup> In the case of the bombing in Bali, also in October 2003, the Security Council adopted a resolution within 48 hours.<sup>19</sup> But it took the Council two weeks of intensive negotiation to adopt the resolution concerning the attacks in Kenya directed at Israelis.<sup>20</sup> Those attacks involved a suicide bombing at a hotel operated by, and catering to, Israelis, and a missile attack on an Israeli civilian airplane. The struggle behind the scenes occurred over references to Israel and Israeli victims. The original draft circulated by the United States, for example, read: "Condemns in the strongest terms the terrorist bomb attack against Kenyan and Israeli civilians." The final version omits the reference to "Israeli civilians" and reads, "Condemns in the strongest terms the terrorist bomb attack at the Paradise Hotel in Kikambala, Kenya, and the attempted missile attack on Arkia Israeli Airlines Flight 582."<sup>21</sup> In addition, while the Security Council resolutions on the Bali and Russian attacks urged co-operation with the Indonesian and Russian authorities in their efforts to bring the perpetrators to justice, the reference to co-operation with "Israeli authorities" was left out of the Kenya resolution.

On 31 August 2004 the Security Council refused to adopt a Presidential Statement condemning the terrorist attack of the two civilian buses in Beersheva. The only response was a press statement—which has no status or distribution as a UN document—informing the public that Council members (not the Council itself) "strongly condemned these bombings that resulted in the loss of innocent lives. They also condemned all other acts of terrorism . . . [and] denounced the escalation of violence in the Middle East and called on all the parties for the continuation of the Middle East peace process."<sup>22</sup> Members of the Council like Algeria and Pakistan refused consensus for a strong unified Presidential statement on the grounds that it would be inappropriate to make selective condemnation of terrorist attacks; they insisted the Security Council has to treat all terrorist acts alike.

On the very next day, however, the Security Council issued a formal UN document in the form of a Presidential Statement in response to the hostage-taking and murder of Russian schoolchildren, parents and teachers. In stark contrast it read:

"The Security Council condemns in the strongest terms the heinous terrorist act involving the taking of hostages at a secondary school in the town of Beslan . . . as well as other terrorist attacks committed recently against innocent civilians in Moscow and on two Russian airliners, in which many lives were claimed and people injured . . . The Security Council expresses the deepest sympathy and condolences to the people and the Government of the Russian Federation and to the victims of the terrorist acts and their families. The Security Council urges all States, in accordance with their obligations under resolution 1373 (2001), to cooperate actively with the Russian authorities in their efforts to find and bring to justice the perpetrators, organizers and sponsors of these terrorist acts."<sup>23</sup>

A more recent example is the Security Council response to the terrorist attack in Tel Aviv at the end of February of this year. No resolution was possible. No Presidential Statement was possible. Algeria refused consensus. Only a press statement was made by the President of the Security Council. It very carefully did not state that the Security Council condemned the suicide bombing, but only "members of the Security Council"; it named no perpetrator, though Islamic Jihad claimed responsibility; it named no state sponsor of the terrorist act though Syria harbors the headquarters of Islamic Jihad and the orders for the attack came from those headquarters; it merely "urge[d] that the Palestinian leadership take immediate, credible steps to find those responsible for this terrorist attack and bring them to justice."<sup>24</sup>

<sup>18</sup> S/RES/1440 (2002), adopted 24 October 2002 concerning events of 23 October 2002.

<sup>19</sup> S/RES/1438 (2002), adopted 14 October 2002 concerning events of 12 October 2002

<sup>20</sup> S/RES/1450 (2002), adopted 13 December 2002 concerning events of 28 November 2002.

<sup>21</sup> S/RES/1450 (2002)

<sup>22</sup> Press Release SC/8177, 31 August 2004, [www.un.org/News/Press/docs/2004/sc8177.doc.htm](http://www.un.org/News/Press/docs/2004/sc8177.doc.htm)

<sup>23</sup> S/PRST/2004/31, 1 September 2004, <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N04/475/84/PDF/N0447584.pdf?OpenElement>

<sup>24</sup> Press Release SC/8325, 28 February 2005.

## THE IMPLEMENTATION MECHANISMS

The definitional problem has not been overcome by practical breakthroughs on the part of the UN's counter-terrorism apparatus.

(a) *The Counter-Terrorism Committee*

The CTC has the job of reviewing reports of UN states on their implementation of Security Council resolution 1373.<sup>25</sup> By 31 December 2004 the Committee had received 551 reports. Every UN member has reported once, over half have reported three times, and over a third has produced four reports.<sup>26</sup> Still, seventy-nine states (or about 40% of UN members) have overdue reports.<sup>27</sup> Approximately 75 reports are backlogged, submitted but not yet considered by the CTC.<sup>28</sup> The Committee reads reports, asks questions of states about the content, and requires an additional report in response to each round of questions. The work of the CTC is almost entirely behind closed doors. The questions posed to countries—which might exhibit some element of criticism—are confidential. The questions themselves must be approved by every member of the Security Council before being sent. The report of the Chair of the CTC to the Security Council in January 2004 pointed to another serious flaw: “. . . the main source of information for the CTC are the reports sent by member States answering . . . the CTC's previous letters . . .”<sup>29</sup> His recommendation—“to gather information from other sources . . .”<sup>30</sup>—has yet to be followed up systematically.

Security Council Resolution 1373 requires that “all States shall:

- (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including . . . eliminating the supply of weapons to terrorists;
- (b) Take the necessary steps to prevent the commission of terrorist acts . . .
- (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
- (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens . . .”<sup>31</sup>

But the CTC has never named a single terrorist organization, individual or state sponsor of terrorism. The CTC website has one sentence devoted to the definition of terrorism. It refers interested parties to the ongoing discussion in the General Assembly's sixth committee over a comprehensive terrorism convention which “would include a definition of terrorism if adopted.”<sup>32</sup>

In July 2004 the CTC was reorganized, and a new Counter-Terrorism Committee Executive Directorate was created. The CTC is now empowered to conduct country visits and is currently conducting its first visit to Morocco. Visits are planned next for Albania, Kenya and Thailand, and the Committee hopes that the numbers will increase to on-site visits once a month. Visits can occur only “with the consent of the State concerned.”<sup>33</sup> It is widely believed that the Committee will stay away from all of the hard cases, or state sponsors of terrorism, and focus on facilitating reporting and providing technical assistance to states which are willing, but unable, to comply with 1373. The CTC's Executive Directorate will recommend countries to visit, but all Security Council members will have to approve such recommendations.

A July 2004 letter from the Chairman of the CTC to the Security Council described “the Committee's main objectives . . . [as] maintaining and strengthening the consensus within the international community on the importance of combating terrorism . . .”<sup>34</sup>—a consensus which exists only so long as terrorism remains undefined.

<sup>25</sup> S/RES/1373 (2001), 28 September 2001.

<sup>26</sup> S/2005/22, 13 January 2005.

<sup>27</sup> S/2005/22, 13 January 2005.

<sup>28</sup> Counter-Terrorism Committee, <http://www.un.org/Docs/sc/committees/1373/submitted-reports.html>

<sup>29</sup> S/2004/70, 26 January 2004, page 12, A.5

<sup>30</sup> S/2004/70, 26 January 2004, page 12, A.5

<sup>31</sup> S/RES/1373 (2001), 28 September 2001, operative paragraph 2

<sup>32</sup> Counter-Terrorism Committee, “A Definition of Terrorism”, <http://www.un.org/Docs/sc/committees/1373/definition.html>

<sup>33</sup> S/RES/1535 (2004), 26 March 2004

<sup>34</sup> S/2004/541, 6 July 2004

*(b) The Sanctions Committee*

A second Security Council resolution 1267, adopted 15 October 1999, and directed at Al Qaeda and the Taliban, created what is called the Sanctions Committee.<sup>35</sup> This Committee gives rise to the only “UN terrorist list,” but its reach is very circumscribed. A name can only be added to the list if all 15 Security Council members agree. While not directly thwarted by the lack of a definition since the terrorist has already been identified, the sanctions committee has been beset by many difficulties<sup>36</sup>:

- the list does not cover all individuals or groups that are members of or associated with Al-Qaeda—the number of individuals who have been designated numbers in the hundreds, despite the fact that thousands of individuals have been arrested or detained in over 100 countries on the basis of links to Al-Qaeda
- the identifiers on the list are unclear
- states often fail to transmit the list to the national authorities responsible for monitoring borders or financial transactions
- diplomats report that some states fail to propose names of Islamic groups or individuals for fear of being seen as anti-Islamic, or for fear of harming domestic commercial interests, for example, by being perceived to have an Al-Qaeda problem
- more than one-third of UN states have failed to produce the required reports on compliance with resolution 1267
- most reports which are submitted fail to provide details of actions taken to implement the sanctions regime
- the travel ban and arms embargo have apparently produced few tangible results.

The Sanctions Committee has failed to reach any agreement on which States are not complying with their Chapter VII obligations, and has never submitted such a list of countries to the Council for a response—even if only to name the offending states publicly. Nor does the Council’s most recent Al-Qaeda/Taliban sanctions resolution<sup>37</sup> contemplate such a move.

In sum, neither the Sanctions Committee, nor the CTC, “are close to reaching agreement on the standards to measure States’ performance, let alone on a list of the non-performers and whether to submit such a list to the Council” for action.<sup>38</sup>

## THE GREEN LIGHT TO TERRORISM

These failures of neglect or omission are not the worst of the UN record on terrorism. UN moves go beyond complicity, and in some circumstances give a green light to terrorists. For three years running the UN Commission on Human Rights has adopted a resolution which condones suicide bombing—when the target is Israel. For instance, the Commission adopted in April 2004 a resolution sponsored by the Organization of the Islamic Conference which incorporates by reference a 1982 General Assembly resolution. The latter speaks specifically of “the legitimacy of the struggle [against] foreign occupation by all available means, including armed

<sup>35</sup> S/RES/1267 (1999), 15 October 1999

<sup>36</sup> See Eric Rosand, “The Security Council’s Efforts to Monitor the Implementation of Al Qaeda/Taliban Sanctions,” *American Journal of International Law*, October 2004, Vol. 98, No. 4, p. 745. See also for recent statement of the activities of the Monitoring Team: “Second report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities”,

<sup>37</sup> S/RES/1526 (2004), 30 January 2004

<sup>38</sup> Eric Rosand, “The Security Council’s Efforts to Monitor the Implementation of Al Qaeda/Taliban Sanctions,” *American Journal of International Law*, October 2004, Vol. 98, No. 4, p. 745 at p. 762.

struggle” and the “right . . . to resist.”<sup>39</sup> The Commission resolution passed by a substantial majority.<sup>40</sup>

Pronouncements of some of the judges of the UN’s highest judicial body, the International Court of Justice, convey a similar message. In its decision last July on Israel’s security fence, Judge Abdul Koroma of Sierra Leone wrote: “It is understandable that a prolonged occupation would engender resistance.”<sup>41</sup> Judge Nabil Elaraby of Egypt said, “Throughout the annals of history, occupation has always been met with armed resistance. Violence breeds violence.” He “wholeheartedly subscribe[d] to the view” that there is “a right of resistance.”<sup>42</sup> Judge Hisashi Owada of Japan spoke of the “the *so-called* terrorist attacks by Palestinian suicide bombers against the Israeli civilian population.”<sup>43</sup>

#### NO SELF-DEFENSE AGAINST TERRORISM

There is a close connection between active encouragement to terrorists and the effort to limit or deny a right of self-defense against terrorism. UN action with respect to Israel makes this especially clear, whether it be UN criticism of the targeted killings of terrorists who cannot be arrested, or the destruction of homes which have been used to conceal entrances to arms-smuggling tunnels, or the construction of a security fence.

For example, in March of 2004, the UN Human Rights Commission convened a special sitting on Israel’s targeted killing of Sheik Ahmed Yassin—a man who personally instigated and authorized suicide bombing, ordered the firing of missiles at Israeli communities, and repeatedly exhorted his followers to armed struggle against Israelis and Jews “everywhere.” On the other hand, the Commission has not held a special sitting on the genocide affecting millions in Sudan.

Targeted killing does not violate international law when the international law requirement of a proportionate response to a serious threat, posed by individuals who were part of the command and control structure of an armed gang, and who could not have been arrested without much greater risk of casualties, is met.<sup>44</sup> Further-

<sup>39</sup> General Assembly Resolution A/RES/37/43, adopted 3 December 1982, says “2. Reaffirms the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial and foreign domination and foreign occupation **by all available means, including armed struggle;**” (bold added);

Commission on Human Rights resolution 2002/8, says “Recalling particularly General Assembly resolution 37/43 of 3 December 1982 reaffirming the legitimacy of the struggle of peoples against foreign occupation.” It was adopted 15 April 2002, 40 states for, 5 against, 7 abstentions.

Commission on Human Rights Resolution 2003/6 says: “Recalling particularly General Assembly resolution 37/43 of 3 December 1982 reaffirming the legitimacy of the struggle of peoples against foreign occupation and for self-determination.” It was adopted 15 April 2003, 33 votes for, 5 against, 15 abstentions.

Commission on Human Rights Resolution 2004/10 says: “Recalling in particular General Assembly resolution 37/43 of 3 December 1982 reaffirming the legitimacy of the struggle of peoples for independence from foreign domination and foreign occupation and for self-determination, in conformity with international law.” It was adopted 15 April 2004, 31 votes for, 7 against, 15 abstentions.

<sup>40</sup> 31 votes for, 7 against, 15 abstentions.

<sup>41</sup> “9. . . . While it is understandable that a prolonged occupation would engender resistance, it is nonetheless incumbent on all parties to the conflict to respect international humanitarian law at all times.” <http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>

<sup>42</sup> 3.1 . . . “Throughout the annals of history, occupation has always been met with armed resistance. Violence breeds violence. . . . The dilemma was pertinently captured by Professors Richard Falk and Burns Weston when they wrote

“ . . . the illegality of the Israeli occupation regime itself set off an escalatory spiral of resistance and repression, and under these conditions all considerations of morality and reason establish a right of resistance inherent in the population. This right of resistance is an implicit legal corollary of the fundamental legal rights associated with the primacy of sovereign identity and assuring the humane protection of the inhabitants.”

I wholeheartedly subscribe to the view expressed by Professors Falk and Weston..”

<http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>

<sup>43</sup> “31. Without going into the question of what is the causal relationship between the tragic acts of mutual violence resorted to by each of the parties and the question of whether the so-called terrorist attacks by Palestinian suicide bombers against the Israeli civilian population should be blamed as constituting a good enough ground for justifying the construction of the wall . . . .”

<http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>

<sup>44</sup> “2004/102. Special sitting of the Commission on Human Rights during its sixtieth session: At its 17th meeting, on 23 March 2004, the Commission on Human Rights decided, by a recorded vote of 34 votes to 3, with 14 abstentions, to call for a special sitting of the Commission on an urgent basis to consider the situation in the Occupied Palestinian Territory resulting from the assassination of Sheikh Ahmed Yassin on the morning of 22 March 2004.” E/2004/23, Report of the Commission on Human Rights.

more, the use of civilian property to support a military attack, by concealing weapons smuggling tunnels in civilian homes, is a war crime. The structures, having been used by terrorists in the midst of combat, constitute a legitimate military target.<sup>45</sup>

Targeting and killing terrorists like Hamas' Ismail Abu Shanab, Yassin and Abdel-Aziz al-Rantissi, even when there have been zero civilian casualties as was the case with Rantissi, have been criticized by UN officials—starting with the Secretary General—as illegal “extrajudicial executions”.

The Hamas Charter includes:

\* Israel will exist and will continue to exist until Islam will obliterate it, just as it obliterated others before it. (Preamble)

\* The Day of Judgement will not come about until Moslems fight Jews and kill them. Then, the Jews will hide behind rocks and trees, and the rocks and the trees will cry out: “O Moslem, there is a Jew hiding behind me, come and kill him.” (Article 7)

Abdel Aziz Rantissi: “We will kill Jews everywhere. There will be no security for any Jews, those who came from America, Russia or anywhere.” (Abdel Aziz Rantissi, Chicago Tribune July 23, 2002.) “We have no choice but to kill the occupier, to kill him everywhere, every village and every city.” (Rantissi, AP, March 11, 2002.)

Ismail Abu Shanab: “We are coming. We have accepted the challenge. We are coming to Tel Aviv. We are coming to every place in Palestine to purify it from the Jews.” (New York Times, Oct. 28, 2000.) See CAMERA, <http://www.camera.org/index.asp?x—article=649&x—context=7>

According to Israel Defense Forces sources, Yassin directly authorized suicide and bombing attacks, personally approving for example:

\* The June 1, 2001, suicide bombing of a discotheque near Tel Aviv's Dolphinarium. 21 young people were killed and 120 wounded when a Hamas bomber blew himself up while standing in a large group of teenagers waiting to enter the disco.

\* The March 27, 2002, suicide bombing of the dining room of the Park Hotel in the coastal city of Netanya. 30 people were killed and 140 injured, in the midst of their Passover holiday dinner (seder).

See Israel's statement to the UN Security Council by Ambassador Dan Gillerman, 23 March 2004

<http://www.aish.com/jewishissues/middleeast/Israels—statement—at—the—UN.asp>

SG/SM/9261, 17 April 2004, “The Secretary-General condemns Israel's assassination of Hamas leader Abdelaziz Rantissi. He reiterates that extrajudicial killings are violations of international law and calls on the Government of Israel to immediately end this practice.”

SG/SM/9210, 22 March 2004, “The Secretary-General strongly condemns Israel's assassination of Hamas spiritual leader Sheikh Ahmed Yassin, which resulted in the deaths of eight others . . . He reiterates that extrajudicial killings are against international law and calls on the Government of Israel to immediately end this practice.”

Terje Roed-Larsen, S/PV.4824, 15 September 2003, “Both during and after the unilateral ceasefire Israel continued to carry out extrajudicial killings aimed at the leaders of Palestinian militant groups. The United Nations has repeatedly and strongly called on the Government of Israel to cease such attacks.”

<sup>45</sup> Destroying homes which cover entrances to tunnels used for smuggling arms into Gaza was immediately criticized by the Secretary General as illegal. SG/SM/9307—PAL/1982, 14 May 2004, “The Secretary-General strongly condemns Israel's ongoing and widespread destruction of Palestinian homes in Rafah in the southern Gaza Strip. Reports cite the demolition of scores of buildings over the last two days, in addition to 130 residential buildings already destroyed this month. The Secretary-General has repeatedly called on the Government of Israel to address its security needs within the boundaries of international law. He urges Israel to uphold its obligations as an occupying power by immediately halting such actions, which are tantamount to collective punishment and a clear violation of international law.” The Secretary General never mentions the tunnels used to smuggle arms beneath the homes destroyed.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), adopted 8 June 1977, entry into force 7 December 1979

Article 51. Protection of the civilian population

**7. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations.** The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

Article 52.—General protection of civilian objects

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, **military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.**

Article 57.—Precautions in attack

Continued

## DO SELECTIVE RULES FOR THE CONDUCT OF THE WAR ON TERRORISM MATTER?

In the conduct of the war against terrorism UN action—where it exists at all—violates the basic Charter principle of the equality of all nations large and small. But the vast majority of UN states and officials believe that this situation is either justified or at least tolerable. The ICJ case on the security fence, however, indicates that the effects of gross double-standards cannot be isolated. The Court declared four new rules about the meaning of the right of self-defense in the face of terrorism today.

(1) There is no right of self-defense under the U.N. Charter when the terrorists are not state actors.<sup>46</sup>

(2) There is no right of self-defense against terrorists who operate from any territory whose status is not finalized, and who therefore attack across disputed borders.<sup>47</sup>

(3) Where military action is perpetrated by “irregulars,” self-defense does not apply if the “scale and effects” of the terrorism are insufficient to amount to “an armed attack . . . had it been carried out by regular armed forces.”<sup>48</sup> (The scale in this case is more than 800 Israeli civilians killed or the proportional equivalent of at least fourteen 9/11’s.)

(4) Self-defense does not include nonviolent acts, or in the words of Judge Rosalyn Higgins: “I remain unconvinced that non-forcible measures (such as the building of a wall) fall within self-defense under Article 51 of the Charter.”<sup>49</sup>

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.

2. With respect to attacks, the following precautions shall be taken:

(a) Those who plan or decide upon an attack shall:

. . .

(iii) Refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, **which would be excessive in relation to the concrete and direct military advantage anticipated;**

(b) An attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, **which would be excessive in relation to the concrete and direct military advantage anticipated;**

<sup>46</sup>The majority decision states:

“139. Under the terms of Article 51 of the Charter of the United Nations:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”

Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State. However, Israel does not claim that the attacks against it are imputable to a foreign State.

. . . .

Consequently, the Court concludes that Article 51 of the Charter has no relevance in this case.”

<sup>47</sup>The majority decision states:

“139 .... The Court also notes that Israel exercises control in the Occupied Palestinian Territory and that, as Israel itself states, the threat which it regards as justifying the construction of the wall originates within, and not outside, that territory. The situation is thus different from that contemplated by Security Council resolutions 1368 (2001) and 1373 (2001), and therefore Israel could not in any event invoke those resolutions in support of its claim to be exercising a right of self-defence.”

<http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>

<sup>48</sup>“33 .... in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Merits, Judgment, I.C.J. Reports 1986, p. 14)*. It there held that military action by irregulars could constitute an armed attack if these were sent by or on behalf of the State and if the activity “because of its scale and effects, would have been classified as an armed attack . . . had it been carried out by regular armed forces” (*ibid.*, p. 103, para. 195). While accepting, as I must, that this is to be regarded as a statement of the law as it now stands, I maintain all the reservations as to this proposition that I have expressed elsewhere (R. Higgins, *Problems and Process: International Law and How We Use It*, pp. 250–251).” per Judge Higgins.

<http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>

<sup>49</sup>35. In the event, however, these reservations have not caused me to vote against subparagraph (3) (A) of the *dispositif*, for two reasons. First, I remain unconvinced that nonforcible measures (such as the building of a wall) fall within self-defence under Article 51 of the Charter as that provision is normally understood.”

<http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>

Each of these conclusions constitutes a direct assault on the ability of every U.N. member to fight international terrorism. The Court severely reduced the potential of the UN Charter to confront violent non-state actors.

#### HUMAN RIGHTS AND TERRORISM

Human rights are the most powerful political currency of our time. In general, although UN actors pay lip service to the idea that the fight against terrorism is a fight to protect human rights, they encourage the notion that fighting terrorism and protecting human rights are most often on opposite sides. This pattern takes different forms, from a focus on the root causes of terrorism which has the effect of excusing it,<sup>50</sup> to a proliferation of UN bodies with a primary interest in “the protection of human rights and fundamental freedoms while countering terrorism.”<sup>51</sup>

As UN bodies struggle to address terrorism in an environment which has not defined it, indefensible conclusions are made and disseminated, such as that of a Special Rapporteur of the UN Sub-Commission on the Promotion and Protection of Human Rights. She stated in her final report last June: “[f]ear of terrorism is heightened by repeated and often exaggerated if not unlikely references to weapons of mass destruction potentially in the hands of terrorist groups or certain States, even though nearly all terrorist acts have been carried out by traditional methods.”<sup>52</sup>

A clear example of the priorities of the UN “human rights” community is the result of the last annual meeting in June 2004 of all UN special rapporteurs/representatives, independent experts and chairpersons of the working groups of the special procedures of the Commission on Human Rights. They decided to have a formal conclusion “regarding the serious incidence that certain measures taken in the name of the fight against terrorism may have on the enjoyment of human rights and fundamental freedoms.”<sup>53</sup> Instead of resolving to investigate, document and re-

<sup>50</sup>“Protection of human rights and fundamental freedoms while countering terrorism,” Report of the High Commissioner for Human Rights, E/CN.4/2005/100, 16 December 2004, p. 5, supporting the conclusions of the Secretary-General’s High Level Panel on Threats, Challenges and Change: “Terrorism flourishes in environments of despair, humiliation, poverty, political oppression, extremism and human rights abuse; it also flourishes in context of regional conflict and foreign occupation . . . [T]he imperative to develop a global strategy of fighting terrorism that addresses root causes and strengthens responsible States and the rule of law and fundamental human rights.” See also “Terrorism and human rights”, Final report of the Special Rapporteur, Kalliopi K. Koufa, E/CN.4/Sub.2/2004/40, 25 June 2004, “Two of the most important essential topics . . . are (i) examination of the many root causes of terrorism . . . The Special Rapporteur recommends that study of these topics be undertaken . . .”

<sup>51</sup>“Protection of human rights and fundamental freedoms while countering terrorism,” Report of the High Commissioner for Human Rights, E/CN.4/2005/100, 16 December 2004; The Report of the independent expert on the protection of human rights and fundamental freedoms while countering terrorism,” Robert K. Goldman, E/CN.4/2005/103, 7 February 2005.

<sup>52</sup>“Terrorism and human rights”, Final report of the Special Rapporteur, Kalliopi K. Koufa, E/CN.4/Sub.2/2004/40, 25 June 2004, para. 71, p. 23. The same Rapporteur finds “there seems to be agreement that such *jus ad bellum* exists in the case of peoples “forcibly” denied or deprived of their right to self-determination by the oppressive State (i.e. its refusal, backed up by armed force or even coercive measures short of military violence, to grant self-determination to the subjected peoples.)”, note 53, page 33.

<sup>53</sup>“Joint statements by participants at the eleventh annual meeting of the special rapporteurs/representatives, independent experts and chairpersons of the working groups of the special procedures of the commission on human rights and of the advisory services programme” E/CN.4/2005/5, 5 July 2004: “A. Protection of human rights and fundamental freedoms in the context of anti-terrorism measures:

The special rapporteurs/representatives, independent experts and chairpersons of the working groups of the special procedures of the Commission on Human Rights and of the advisory services programme, meeting in eleventh annual session in Geneva from 21 to 25 June 2004, reiterate the concerns expressed in their statement of June 2003 regarding the serious incidence that certain measures taken in the name of the fight against terrorism may have on the enjoyment of human rights and fundamental freedoms.

They once again strongly voice their unequivocal condemnation of terrorism in all its forms. At the same time, they reaffirm their individual and collective determination to monitor, each within the framework of his or her mandate, those policies, legislation, measures and practices developed by States in the name of the fight against terrorism, with a view to ascertaining that they are consistent with international human rights standards.

Bearing in mind a number of recent developments that have seriously alarmed the international community with regard to the status, conditions of detention and treatment of prisoners in specific places of detention, they express their unanimous desire that the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Leila Zerrougui, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of phys-

Continued

port on incidents of terrorism, as well as its forms, its impact and state responsibility, they resolved only to “monitor . . . policies, legislation, measures and practices developed by States in the name of the fight against terrorism, with a view to ascertaining that they are consistent with international human rights standards.” Instead of expressing horror at the nature and results of terrorism from beheading to suicide bombing, and resolving to expose the perpetrators and collaborators, they were only “seriously alarmed . . . [at] the status, conditions of detention and treatment of prisoners in specific places of detention” and immediately called upon various members to focus on “those persons arrested, detained or tried on grounds of alleged terrorism or other violations, in Iraq, Afghanistan, the Guantánamo Bay military base and elsewhere, with a view to ascertaining . . . that international human rights standards are properly upheld with regard to these persons.”

In 2003 the Office of the UN High Commissioner for Human Rights produced a “Digest of Jurisprudence of the UN and Regional Organizations on the Protection of Human Rights While Countering Terrorism.” The paper, which was in such demand that it was reprinted this past December, spends two pages on jurisprudence concerning a “state duty to protect” and 75 pages on “compatibility of counter-terrorism measures with human rights obligations.” In its introduction, the paper states “Human rights law has sought to strike a fair balance between legitimate national security concerns and the protection of fundamental freedoms.”<sup>54</sup>

Overall, the UN apparatus and those fighting the war on terrorism have failed to elaborate the human rights values on the other side, or to breakdown the faceless monolith of national security into human rights components—even the very international human rights components touted by the UN system.

The kind of detail that might be envisaged, for example, is this. There are underlying moral principles of all international human rights law, regardless of its source: human dignity and the essential need for social order. The Universal Declaration of Human Rights identifies freedom from fear as one of the most fundamental needs of humankind. These elemental normative building blocks—human dignity, social order and freedom from fear—have given rise over almost six decades to a normative legal system and the modern regime of international human rights law. That regime applies to all UN member states, since all have ratified at least one of the major human rights treaties. Individuals everywhere are entitled to the promotion and protection of human rights.

What is the nature of the state duty to protect? The Racial Discrimination Convention requires states to act by all appropriate means and without delay. The Civil and Political Covenant insists that states ensure the rights recognized, take the necessary steps, and adopt the measures which are necessary to give effect to the rights. The Convention Against Torture requires states to take effective measures to prevent acts of torture and to undertake to prevent cruel and inhuman treatment. The treaties’ demands are direct and insistent: “bring to an end,” “adopt immediate and positive measures,” “eliminate,” “adopt measures to give effect to,” “guarantee,” “take effective measures,” “prevent.”

States have obligations to protect a long list of right and freedoms, including:

- the right to life
- the right not to be subjected to torture, inhuman or degrading treatment
- the right to equality, non-discrimination and not to be subjected to persecution
- the right to security of the person
- the right not to be subjected to incitement to violence or war
- freedom of religion
- the right to protection of the family
- the right to protection of the child

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ical and mental health, Paul Hunt, and the Special Rapporteur on the question of torture, Theo van Boven, visit, together and at the earliest possible date, those persons arrested, detained or tried on grounds of alleged terrorism or other violations, in Iraq, Afghanistan, the Guantánamo Bay military base and elsewhere, with a view to ascertaining, each within the confines of their mandate, that international human rights standards are properly upheld with regard to these persons, and also to make themselves available to the authorities concerned for consultation and advice on all issues within their areas of competence. They further express the wish that they present the outcome of their approaches and visits to the Commission on Human Rights at its sixty-first session.”

<sup>54</sup>2003 Digest of Jurisprudence of the UN and Regional Organizations on the Protection of Human Rights While Countering Terrorism. <http://www.ohchr.org/english/about/publications/docs/digest.doc>

- the right to education
- freedom of movement
- the right to vote
- freedom of association

Violations of the first two rights, the right to life and the right not to be subjected to torture, inhuman or degrading treatment, by some forms of terrorism such as suicide bombing amount to a crime against humanity. Violation of these two rights may also amount to genocide or an attempt to commit genocide. In the case of the rights to equality, non-discrimination and the right not to be subject to persecution on grounds such as race, religion or national or ethnic origin, the nature of the violation may also amount to a crime against humanity.

A state must then weigh any action it takes to fulfill its duty to protect this list of basic rights against the potential limitations imposed on other rights. A balancing act between rights becomes necessary. But it is a balance which has spelled out human rights on both sides of the equation. Balancing rights is done by considering the proportionality of action taken and the purpose. Generally speaking, the limitations imposed must be for a legitimate purpose such as public order, health or national security, and proportionate to this goal.<sup>55</sup>

State action to combat terrorism may also result in indirect violations of rights of individuals, such as limiting or infringing freedom of movement. However, these rights are infringed—that is caused in legal terms—by the terrorist and not by those who respond to the terrorism. The analogy should be to the armed robber who takes a hostage in the course of the robbery and the hostage is killed by police in the attempt to free him—the robber is in legal terms said to have caused the death of the hostage. A civilian population may be hostage to the terrorists among it. State actions—like those of the police officer—are taken in fulfillment of its duty to protect recognized human rights.

At the same time, just as the policeman must not start shooting indiscriminately in the case of a hostage-taking, the state must balance its response which is (taken in order to protect the rights of the targeted victims of terrorism) against the rights which will be limited or infringed.

The failure to delineate in detail the human rights of the victims of terrorism, along with the full scope and responsibility of the state's duty to protect, let alone to investigate terrorist incidents and follow the trail back to the UN member states harboring and sponsoring their activities, has played a significant role in undermining support for the war against terrorism.

#### CONCLUSION

In conclusion, the United Nations has had a serious negative influence on the ability to fight international terrorism. Cutting the battle loose from the UN framework, may be necessary for the war to be won.

Mr. ROYCE. Thank you.

I would like to go to our Ranking Member, Mr. Sherman, for any questions he might have.

Mr. SHERMAN. It is my understanding that the U.N. representative that we are going to hear from is not a second panel of this hearing—or is not even a hearing and would not come to a hearing—but is here for an off-the-record briefing. Do I have that right?

Mr. ROYCE. No. It is an on-the-record briefing.

Mr. SHERMAN. On the record.

Mr. ROYCE. It is open—it simply has to do with protocols, and so basically we will adjourn the Subcommittee, and then we will begin a briefing of the Subcommittee on the very issue that we have just finished discussing, the U.N. and terrorism. By doing it in this fashion it allows the representative from the United Nations to appear today, and have this dialogue with us, Mr. Sherman.

Mr. SHERMAN. Well, maybe the U.N. could adopt a rule that if one country is paying 25 percent or more of its budget, or even 20

<sup>55</sup> There are other limitations imposed upon derogations of rights, see Article 4 of the Covenant on Civil and Political Rights.

percent of its budget that is coming from a particular parliamentary body, that its people could testify before that body.

Ms. Bayefsky. Thank you for your testimony. You highlight the double standard applied with regard to terrorism on the one hand, and anti-Israel terrorism on the other, and demonstrate how this bias against Israel has hurt our effort to develop an effective U.N. counterterrorism policy. You argue that the unwillingness of states to adopt the definition of terrorism that would embrace terrorism by Arabs against Israel has hobbled the U.N.'s efforts. Now, anti-Israel bias is not limited to the U.N., but I know that the anti-Israel bias seems often to be played out at the U.N., to the point where U.N. staff and even representatives of various states seem to be more anti-Israel than the governments they are representing.

Just in terms of the culture of the people who work at the U.N., whether they work for the U.N. or for the member governments, is there some reason why those people have an even stronger anti-Israel bias than the statements of the member states?

Ms. BAYEFISKY. Well, there has been a culture of anti-Israel bias at the U.N. for literally decades, three or four decades, and it is prevalent in the actions of member states and also in the actions of members of the secretariat. In the terrorism context, for example, in response to Israel's attempts to engage in self-defense in accordance with the U.N. Charter to combat terrorism, members of the secretariat—starting with the Secretary-General—have gone out of their way to condemn Israel for violations of international law, applying rules which are not applied to any other state.

The Secretary-General and the U.N. Secretariat are fond of blaming member states for everything that goes on at the United Nations. It is not true. The tone is set by the secretariat staff. In the context of Jenin, for example—which was called even by Fatah-authored report, the “suicider's capitol”—when Israel took action there, the U.N. officials, such as Terje Roed-Larson and Peter Hansen, said it was a hellish battle zone, and their hysterical comments suggesting that there was a massacre were contrary to the facts and contributed to an environment of double-standards, as you indicate.

Mr. SHERMAN. Has any U.N. employee ever been reprimanded, fired or suspended for any statements no matter how virulent against Israel?

Ms. BAYEFISKY. Well, there is a shake-up going on at the moment in the Secretary-General's inner circle, but I do not think that this is likely to have been directly tied to these issues although—

Mr. SHERMAN. He may be trying to purge anyone who has not made an anti-Israel statement.

Ms. BAYEFISKY. Well, Peter Hansen is gone, but in part it is a response obviously to the Oil-for-Food Program issue, and the closer examination of the behavior of the secretariat itself.

But to answer your question, I mean, member states obviously carry with them a responsibility to condemn terrorism no matter who the target or state actor is.

Mr. SHERMAN. Is this anti-Israel bias so strong that we should give up on the U.N. not only as a place to combat anti-Israel terrorism but as a place to combat other forms of terrorism as well?

Ms. BAYEFSKY. I think the double standards which are applied to Israel affect all other states, and the problem cannot be simply set aside as a problem for Israel alone. To give you a small example, take the U.N. Human Rights Commission, which is the leading human rights body of the United Nations. Thirty percent of its resolutions ever adopted which condemn a specific state are on the State of Israel, but it has never passed a single resolution on China or Syria or Saudi Arabia.

It is meeting at the moment now. It started this week. There is one agenda item on Israel. There is one agenda item devoted to criticizing the human rights record of every other U.N. state, so the time spent on Israel hurts the time and effectiveness of the U.N. to deal with human rights violations elsewhere. There has never been a special session of the General Assembly or the commission condemning Sudan for heinous violations over two decades. So yes, it damages the credibility of the entire institution.

Mr. SHERMAN. And the difference is Sudan is engaged in genocide and Israel is engaged in self defense.

Mr. Comras, what would happen if the U.S. offered a Security Council resolution which enshrined a definition of terrorism similar to the one developed by the high-level panel, one that is close really to our understanding of the definition of terrorism? Would it pass given the fact that at least the permanent members of the Security Council seem to be victims of terrorism? Would not a Security Council resolution be a quicker way of getting an international definition of terrorism rather than waiting for the convention?

Mr. COMRAS. I think the time is ripe for the Security Council to consider such a definition. The premise for such consideration has already been laid in terms of the high-level panel's recommendations, the strong statement behind it that has come from the Riyadh conference, the Madrid conference, as well as the commitment of the Secretary-General. I believe that it would be very difficult for any Security Council member to stand against it.

The arguments that some may play is that a terrorism definition is best left to an international convention. But, I do not think we can wait for an international convention. I think that the effectiveness of the sanctions themselves, the effectiveness of 1373 as a resolution in the war on terrorism, now requires that there is a very clear statement of who the terrorists are so that states can be held accountable in dealing with them.

Mr. ROYCE. Let me ask you a couple of questions on some of your testimony. You stated that the independent monitoring group of which you were a member, through its reports that "named and shamed," helped stimulate several countries to take corrective measures. I was going to ask you if you could give a specific example of where you thought that was successful.

Mr. COMRAS. Certainly, Mr. Chairman.

We named a number of charities that posed difficult problems. These were charities where there was a very clear record that they were continuing to support international terrorism and al-Qaeda. Following our reports, further actions were taken by the United States and several other countries, including Saudi Arabia, to actually begin to do what they said they would do earlier, to close them down. I refer to Al Haramain and to making sure that Saudi Ara-

bia exercised closer control over all charitable funds that were leaving Saudi Arabia.

We also addressed problems related to the ownership, or the failure to freeze assets other than bank accounts. As a result, we saw actions taken by the Italian Government, by Liechtenstein, and by Switzerland, to address some of the problems that we identified at that time.

We suggested that certain new actions and considerations ought to be taken under the Schengen Agreement. We helped stimulate a debate within the European Union and the Schengen members about the course that Schengen had to take to deal with the travel—the potential travel—of terrorists within their free space in Europe.

These are some examples, I think, that flowed in part from the publicity that was given to our report and our ability to name and shame. We raised these issues very clearly in a specific context related to countries, individuals, and entities.

Mr. ROYCE. Perhaps Liechtenstein has taken action. I was not familiar with that. As I understood it, it was still a problem.

Mr. COMRAS. I am sorry?

Mr. ROYCE. I know Switzerland took some action, but you said Liechtenstein had taken action as a result of this, or this just stimulated a debate that at least surfaced to the point where member states were to have a dialogue? I mean, was there actual concrete implementation of an accord as a result? I was not familiar with that.

Mr. COMRAS. Well, there were several steps taken by Liechtenstein to address the problems that we had underscored, including placing new requirements on all shell companies in Liechtenstein. They must now provide a profile of all of their assets before they can be registered. The Liechtenstein Government also moved to replace Mr. Nada as the liquidating agent of his holdings, because he was under the proscription of the Al-Qaeda Committee. They appointed one of their previous prime ministers to serve as the liquidator. Nada's liquidation of his frozen assets was a problem we raised. Our work led to making the issue well known and the Liechtenstein authorities acted I think, to correct this.

Mr. ROYCE. Although they still allow attorneys to represent these organizations?

Mr. COMRAS. Yes.

Mr. ROYCE. And they do not have the transparency to know whether or not terrorist organizations are still banking and moving financially?

Mr. COMRAS. They have established their own financial intelligence unit. They have begun to put in place a number of additional measures to filter those shell companies that are established there. They got themselves off of the FATF non-compliance list. We think that we helped clarify the issues and explain some of the steps that they needed to take.

Mr. ROYCE. I see. If you could go through a little bit of the history, and I wanted to ask you specifically about the U.S. position on "naming and shaming." As you know, I am an enthusiast for that approach, and as I watched that dissolve I have an interest in finding out how it dissolved, and which states were on which

side of the debate. And now that you are here I thought it would be an excellent opportunity to learn a little bit about the inside of how it developed.

Mr. COMRAS. Thank you, Mr. Chairman.

Mr. ROYCE. Because it was a great step back in terms of the ability to have leverage.

Mr. COMRAS. There are several reasons that led to the committee taking up the mandate of the monitoring group. First, the notion of an independent monitoring group did not sit too well with a number of member countries. In the debates that we had, in the discussions that we had when we presented our report to the Al-Qaeda Committee, one could sense a growing tension that other countries—that members of the Al-Qaeda Committee were not always comfortable with our naming them or other countries which they might speak for, and they tried to get us to change our reports.

We consistently refused to do so unless a mistake could be demonstrated, in which case we acted to correct the error. This resistance created a kind of tension within the committee toward the monitoring group, which some countries, including our own, I believe, felt was unhealthy.

Nevertheless I think it was a mistake for our Government to join in with others to suggest a new mechanism which would be under much closer control by the Al-Qaeda Committee.

The reason I was given in my discussions with those that were involved was that they thought that they could strengthen the hand of the Al-Qaeda Committee. I thought that was naive. This is a political body. These are the same states as the Security Council states. It is just too political for them, and the experience that I had with sanctions over a number of years demonstrated to me that you needed some other mechanism to be able to “name and shame.” The committee itself would never be able to take that role upon itself.

The proof of the pudding is in the eating. When I read the report of the new al-Qaeda analytical group, I was surprised that they steered away from naming or shaming anyone. They do raise some problems, but their report goes back to the old language of the United Nations: “Some countries do this, and some countries do that.” It is hard to know which countries they are talking about.

Mr. ROYCE. And the whole concept on developing a consensus before you can move forward—well, the argument that has held everything in abeyance just on a definition of the word “terrorism,” how long has this played out that we have been unable to define the word “terrorism” at the United Nations? This has been an issue for a generation?

Mr. COMRAS. Yes, it has.

Mr. ROYCE. But a name can only be added to the consolidated terrorist list if all 15 members of the Security Council agree to that. I wondered, did you ever experience a situation where countries may be overtly or covertly basically vetoed names for inclusion?

Mr. COMRAS. It was very rare. There were times when names were presented because countries had their own agendas, and to be frank, the names may have been far-fetched when it came to the

al-Qaeda and associated group definition. But the problem really did not stem from the committee's refusal to take a name, it stems much more broadly from the failure of countries to provide the names and information to the committee.

Mr. ROYCE. We are going to go to Mr. Poe at this time.

Mr. POE. I do not have any questions.

Mr. ROYCE. Let me go to our other witness, and ask Dr. Bayefsky: You criticize the United Nations for its inability in your report to come up with a definition of terrorism. What would be your definition of terrorism?

Ms. BAYEFSKY. Well, I think that the definition in the high-level panel that they suggest is actually a fairly good one. I think the elements are essentially there. The definition which they suggest is on page 52, and it talks about the various elements. Any action that is intended to cause death or serious bodily harm to civilians or non-combatants when the purpose of such act by its nature or context is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

I do not think it is only a matter of being able to identify what is an appropriate definition—setting aside the exemption clauses for acts committed in the name of self-determination or against foreign occupation.

The problem is, as you indicate, a lack of consensus, and whether the United Nations is ever capable of generating consensus. The comprehensive convention has been under consideration for 6 to 7 years, and the working group of the Sixth Committee has never been able to move out of the working group. But the Security Council is capable of defining terrorism if it so chooses in the absence of a comprehensive convention.

Mr. ROYCE. You reference a comprehensive convention on international terrorism in your testimony, and the Secretary-General last week made a push for just such a convention. What would that entail, and would it have the potential, in your view, in the final analysis to bolster American security?

Ms. BAYEFSKY. There is a lot of debate about whether or not it would add very much at all. The definition issue, and the relationship between the comprehensive convention and the other 12 terrorism conventions, is subject to some dispute. Would the convention trump the earlier convention, or is it intended to be kind of an overview of a whole range of issues also covered in those other conventions, or is it filling in the gaps? That has not been decided.

The main issues that it can address, as I say, is the definitional issue. Will it be a significant factor in U.S. security? It depends on the willingness to implement it, who ratifies it, whether there will be any intention of following up failures to abide by its terms. Like any treaty, it is meaningless if states (a) do not ratify it, and (b) do not adhere to its terms, or ratify it for show and do not take it seriously.

So treaties in and of themselves are not necessarily vehicles for moving forward or advancing American security interests, certainly not of themselves.

Mr. ROYCE. What are the one or two top reforms that the U.N. should adopt in the area of countering terrorism in your opinion?

Ms. BAYEFISKY. Number one is coming up with a definition of terrorism; and number two is getting serious about naming terrorists: Individual terrorists, terrorist groups and organizations, and state sponsors of terrorism. But the question is whether the United Nations has any ability to do those things, and at the moment one does not see any sign of it.

The Security Council quite clearly is stymied in the naming of terrorist organizations or terrorist actors by this unofficial consensus rule. And the example of that, as I say, is the Tel Aviv bombing in February clearly committed by Islamic Jihad—they took responsibility. The orders came from the Islamic Jihad headquarters in Syria, and the Security Council could not adopt a resolution, could not adopt a presidential statement, and it ended up with a press statement from the president which just said nothing about who committed it. It simply asked the Palestinian Authority to investigate who was responsible.

So without being able to name those who violate the rules, the United Nations is really an ineffective means for combatting terrorism.

Mr. ROYCE. Well, Ms. Bayefsky and Mr. Comras, we appreciate very much your coming and testifying today, and we are going to adjourn our hearing, and go to a special Subcommittee briefing. So thank you so much, and this Committee hearing stands adjourned.

[Whereupon, at 2:41 p.m., the hearing was adjourned.]



## **BRIEFING: THE UNITED NATIONS AND THE FIGHT AGAINST TERRORISM**

**THURSDAY, MARCH 17, 2005**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INTERNATIONAL TERRORISM  
AND NONPROLIFERATION,  
COMMITTEE ON INTERNATIONAL RELATIONS,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 2:42 p.m. in room 2255, Rayburn House Office Building, Hon. Edward Royce, (Chairman of the Subcommittee) presiding.

Mr. ROYCE. We are going to hear from Mr. Stephen John Stedman today. He currently serves as special advisor to Secretary-General Kofi Annan. He previously served as Research Director for the High-level Panel on Threats, Challenges and Change, where he was the principal writer of the report, "A More Secure World: Our Shared Responsibility," which was released this past December. He is currently on leave from Stanford University.

I thank Mr. Stedman for agreeing to speak to us at this briefing on the United Nations and the Fight against Terrorism. Thank you, Mr. Stedman.

Mr. STEDMAN. Thank you.

Mr. ROYCE. And I would suggest if you would just summarize your report. I read it last night. If you could just summarize it in a couple of minutes, and then we can go to questions.

Mr. STEDMAN. Absolutely.

### **STATEMENT OF STEPHEN J. STEDMAN, PH.D., SPECIAL ADVISOR TO THE SECRETARY-GENERAL, UNITED NATIONS**

Mr. STEDMAN. As Research Director of the United States High-level Panel on Threats, Challenges and Change, we were given three jobs.

First of all, we had to assess threats to international peace and security. We had to evaluate how the United Nations has done in addressing those threats, and then we had to put forward policy and institutional change recommendations so the U.N. could better address these threats.

Terrorism was one of six threats the panel identified. Its judgment was that the U.N. has done some things against terrorism, and that certainly since 9/11 has done more, but the feeling was that it was insufficient; that it had not taken advantage of what should be its most compelling asset, its normative voice to proclaim loud and clear to everyone that terrorism is a tactic that is unac-

ceptable any time, anywhere, no matter what cause a group espouses.

Mr. ROYCE. And you feel that now—at least the Secretary-General has done that?

Mr. STEDMAN. The Secretary-General has done that now in three different speeches, in London, Munich, and in Madrid last week, and he agrees with the High-level Panel report, and is pushing the member states this year to get action on the comprehensive convention based on a common definition of terrorism.

The High-level Panel also asked the Secretary-General to put forward a more comprehensive strategy for addressing terrorism. This is something that the United Nations has never done. They have disparate activities in addressing terrorism, but there is no sense of a whole there.

He did this last week in Madrid, and I thought I would just go over the points of his speech as part of the strategy.

Mr. ROYCE. I read his speech and I think many of the members of the audience did as well.

Mr. STEDMAN. Okay.

Mr. ROYCE. I mean, it was covered pretty well. But let me ask you a question if I could. The U.N. Security Council Resolution 1373 required all countries to take steps to counter terrorism. So the fundamental question is, What happens when states do not take those required steps under the resolution? Should the countries that fail to act against terrorism be, to use the phrase we were using in our hearing, “named and shamed”? Should they be sanctioned?

I obviously am an enthusiast for this approach, but I wanted to ask your thoughts on this in order to make certain that the debate goes somewhere from here other than the statement made by the Secretary-General.

Mr. STEDMAN. Yes. My answer would be “yes, but.” The High-level Panel recommended, in fact, that there should be predetermined sanctions for states that do not comply with Resolution 1373. The “but” here is that at this point it is hard to know whether lack of compliance is due to ill-will or lack of capacity.

Now, the Counterterrorism Directorate is canvassing member states. Over 100 member states have asked for technical assistance in meeting their obligations under 1373. They are in the process of channeling that assistance.

My sense is that you want a judgment, first of all, that states have the capacity to comply. And if you then find countries that clearly have the capacity to comply, but are not complying, then I think sanctions would be appropriate.

Mr. ROYCE. Let me ask you this question. It was in January 2004 that the monitoring group charged with overseeing sanctions in al-Qaeda, which one of our witnesses here served on, was put out of business.

Its work was then taken up by the monitoring group. So the question is, Why the change? Was that change done because this monitoring group was too aggressive in naming and shaming countries not cooperating with the sanctions regimes? What are the politics involved here?

You are a student and an expert on this subject. I thought I would ask you that question.

Mr. STEDMAN. The short answer on that is that I do not know. There were certainly those kinds of allegations at the time. There was also, quite frankly, or should I say, there is a coordination problem because we now have several different committees of the Security Council doing similar kinds of activities across a host of issues that involve both counterterrorism and proliferation. At some point you do need to rationalize those. But the short answer is, I do not know exactly what the real politics were behind it.

Mr. ROYCE. I guess the wider question that many people are asking is, Why should Americans put faith in the U.N. to combat terrorism when several of its member states are state sponsors of terrorism, more are openly hostile to the United States, and there is this consensus, unanimous consensus almost, operation where you have a block of states that for over a generation have resisted the very concept of defining attacks against civilians as terrorism?

Mr. STEDMAN. My answer would be that we think that that is changing, and the Secretary-General is certainly going to put member states on the spot this year to see if it has changed.

There have been two classic rationalizations, if you will, by groups who have opposed a common definition of terrorism. One is raising an issue of state terrorism, and as our report rightly points out there is no problem with the question of state use of force. State use of force is constrained by all kinds of existing international conventions, including the Geneva Convention. The real asymmetry, of course, is constraint on non-state actors, and that is what we are going for here.

The second rationalization or objection comes from those who seem to think that resistance to occupation confers a right or liberty to target civilians and non-combatants. And the panel said, and the Secretary-General has said—and again the panel did have Amre Moussa, who is the Secretary-General of the League of Arab States—that does not wash anymore.

Whatever you think about a right to resist, it does not give liberty to intentional targeting and killing of civilians and non-combatants.

So we are hoping that this is going to be enough of a tool for the Secretary-General to loose up a lot of the old attitudes of some of the member states that you have in mind. But even it is not, I think what you will get is that most members of the United Nations take this seriously. They do address terrorism as a threat, and they want a more effective response.

Mr. ROYCE. Well, Mr. Stedman, I want to thank you for coming down today. We got cramped obviously by the votes and we have got a series of those, so I am going to have to adjourn this briefing now in order to make those votes on the budget.

Mr. STEDMAN. Okay.

[The prepared statement of Mr. Stedman follows:]

PREPARED STATEMENT OF STEPHEN J. STEDMAN, PH.D., SPECIAL ADVISOR TO THE  
SECRETARY-GENERAL, UNITED NATIONS

Thank you for the opportunity to brief the Sub-Committee.

Terrorism is a threat to international peace and security. It has struck wealthy and poor countries alike; it has struck every continent. The United Nations itself

has been a victim of terrorist attacks. The United Nations lost 22 colleagues in the August 19, 2003 suicide bombing in Baghdad. Indeed, the United Nations and other international organizations have been a frequent target of terrorist attacks. According to the U.S. State Department's database on international terrorism, since 1997 there have been more than fifty terrorist incidents against international organizations. Beyond the threat to United Nations personnel, it is also an attack against the values of the United Nations: the sanctity of human life, the protection of civilians from armed attack, the rule of law, tolerance, and the promotion of peaceful conflict resolution.

The challenge of stopping terrorism has taken on even greater urgency because of the potential of catastrophic terrorism. In a world of excess hazardous material, abundant technological know-how and the stated intention of some terrorists to inflict mass casualties, the United Nations must actively work to prevent a terrorist attack that would lead to mass destruction.

The United Nations High-level Panel on Threats, Challenges, and Change, for which I served as research director, considered terrorism one of the six main threats to international peace and security. Part of my job was to assess how the United Nations has done in addressing those threats. Our message on the United Nations and terrorism was that the UN has taken some important steps in contributing to the global effort to counter terrorism, but that it had largely disappointed in sending a loud and clear message that terrorism was unacceptable and a threat to international peace and security. The Panel urged the Secretary General to put forward a vision of a principled, effective strategy against terrorism that would respect and protect the rule of law and universal human rights. In Madrid last week, the Secretary General picked up that challenge and enunciated such a vision.

Let me begin with what is not in that vision. There is no vision of a United Nations on steroids, taking up responsibilities that are best left to governments; no vision of a United Nations as the sole actor in the world's struggle against terrorism. Instead, there is a vision of a United Nations that takes it place alongside governments and other multilateral arrangements, using its comparative advantage to supplement others' efforts.

The Panel noted and the Secretary General agrees that coercion has a role in countering terrorism. What the Panel asked for, however, and what the Secretary General put forward, is a strategy that places coercion in a comprehensive framework, where it is one element of a successful global effort.

The Secretary General's strategic vision can be summarized by what he calls the 5 Ds:

- Dissuasion
- Denial
- Deterrence
- Development of state capacity
- Defense of Human Rights

**Dissuasion** refers to attempts to convince disaffected groups from choosing terrorism as a tactic to achieve their goals.

Groups use terrorist tactics because they believe that those tactics are effective and that people, at least those in whose name they claim to act, will approve. Such beliefs are the true "root cause" of terrorism.

To address this root cause, all political and moral authorities everywhere must state clearly that terrorism is unacceptable under any circumstances, and in any culture.

The United Nations was central in negotiating and adopting twelve international anti-terrorism Conventions, but has not been able to produce a comprehensive convention outlawing terrorism in all its forms. The stumbling block has been an agreed definition of terrorism. This has damaged the reputation of the United Nations and has impaired its moral voice.

The problem is not a legal one—almost every terrorist activity is proscribed by the existing twelve conventions. The problem is a political one, with different groups trying to carve out exceptions for what constitutes terrorism, essentially to claim that their cause provides cover for the killing of civilians.

It is now time for all to agree unequivocally that no cause, no matter how legitimate, allows a group the right to deliberately kill or maim civilians and non-combatants.

The High-level Panel has put forward a definition to break the deadlock and the Secretary General has pledged to work to urge world leaders and governments to unite behind it.

**Denial** refers to preventing terrorists from acquiring the means necessary to carry out attacks, whether by making it difficult for them to travel, to receive financial support, or to acquire dangerous materials that could lead to catastrophic attack.

In 2002 the United Nations adopted the Convention on the Suppression of Financing of Terrorism. The Security Council has long imposed travel and financial sanctions against members of Al Qaida. But the Secretary General noted that more needs to be done. He has urged governments to adopt and promote the work done by the OECD's Financial Action Task Force, especially its eight Special Recommendations on Terrorist Financing.

He has applauded the important steps taken by the G8 and the UN Security Council to consolidate, secure, and eliminate potentially hazardous materials, and to implement effective export controls. He strongly supports both the Global Threat Reduction Initiative and the Proliferation Security Initiative as key efforts to fill a huge gap in our defenses against catastrophic terrorism.

As part of a strategy of denying terrorists the capability to carry out catastrophic attack, the Secretary General believes that important steps should be taken to address crises of compliance and credibility in the Nuclear Non-proliferation Treaty, and supports the establishment of new arrangements that would create incentives for countries that seek civilian nuclear power to forego the enrichment of uranium and the facilities necessary for uranium enrichment.

**Deterrence** refers to the need to ensure that states refrain from supporting terrorist groups. In the past the United Nations Security Council has applied sanctions against those states that harbor and assist terrorists, and there is good evidence that partly because of those sanctions, several states that used to sponsor terrorists no longer do so.

This firm line must be maintained and strengthened and all states must know that, if they give any kind of support to terrorists, the Security Council will not hesitate to use coercive measures against them.

**The development of state capacity** refers to building states that are able to prevent terrorism. Terrorists exploit weak states as havens where they can hide from arrest, and train or recruit personnel. Making all states more capable and responsible therefore must be a cornerstone of global counter-terrorism. This means promoting good governance, the rule of law, and professional police and security forces who respect human rights.

The United Nations has done a lot in this area. Security Council Resolution 1373 required every state to take important steps in preventing terrorism. The Counterterrorism Committee of the Security Council, now aided by a full-time Directorate, monitors compliance with the Resolution, and assists states in their efforts to comply. The United Nations Office on Drugs and Crime in Vienna has helped more than 100 countries with draft legislation and assistance in developing effective criminal justice systems. Where the drug trade has helped to bolster terrorism, as in Afghanistan, the UNODC is also active in assisting the Afghan authorities in developing and implementing its new strategy of poppy eradication.

The rule of law is the backbone of good governance. The United Nations Development Program has made important contributions towards building rule of law. The Arab Human Development Report, published by UNDP, has been a catalyst for a wide ranging debate within the Middle East on the need for greater political participation, empowerment of women, political freedom and civil liberties in that part of the world. The United Nations' Electoral Assistance Division is increasingly called on to assist countries with elections—often at turning-points in their history, as recently in Afghanistan, the Palestinian Territories, and Iraq. The Secretary General has called on governments to build on this work, by supporting a proposal, first put forward by President Bush to the General Assembly last September, to create a fund to help countries establish or strengthen democracy.

The threat of biological terrorism vividly illustrates the imperative of building state capacity. The best defense against this danger lies in strengthening public health. The World Health Organization's Global Outbreak Alert and Response Network has done an effective job monitoring and responding to outbreaks of deadly infectious disease anywhere in the world, but needs greater resources to plan for and tackle an overwhelming outbreak, whether natural or man-made. Of course, it is local health systems that are in the front line in such responses, and in many countries they are inadequate or non-existent. The Secretary General has called for a major initiative that will strengthen global public health from the local to the international.

The fifth D, **defense of human rights**, refers to the importance of respecting human rights and the rule of law in the fight against terrorism. Terrorism is itself

an attack on human rights and the rule of law, and if we sacrifice them in our response, we are handing a victory to the terrorists.

Human rights law makes ample provision for strong counter-terrorism action. Law enforcement officials and counterterrorism experts agree that upholding human rights is not merely compatible with successful counter-terrorism strategy, but an essential element of it.

Unlike terrorists, democratic governments, as well as international organizations, are accountable to citizens. To promote accountability in the fight against terrorism, the Secretary General has endorsed a proposal to create a Special Rapporteur on counter-terrorism measures and their compatibility with international human rights laws.

### *Conclusion*

It should be clear that the United Nations and the current Secretary General have an important role to play in the fight against terrorism. That role does not seek to usurp what governments and states must do against the threat. It acknowledges that while the United Nations has limitations, it also has important contributions to make in dissuading groups from choosing terrorism, denying terrorists the means to carry out attacks, deterring states from supporting terrorists, developing state capacity to prevent terrorism, and defending human rights in the fight against terrorism.

The Secretary General has called upon the member states to make 2005 a year of decision for the future of the United Nations. The fight against terrorism, especially the threat of catastrophic terrorism, will be an integral part of the effort to make the United Nations more relevant to the threats of today.

#### APPENDIX: WHAT THE UN HAS DONE TO FIGHT TERRORISM

- For many years now, even decades, the United Nations has been actively involved in fighting terrorism. Here is an overview over the UN's most significant achievements.

##### *1. Norm-Setting*

- The United Nations has been central in the development of an international legal framework against terrorist acts. The UN has, over the past decades, promoted and adopted **twelve international conventions that criminalize specific acts of terrorism**, e.g. acts against certain means of transport or facilities; acts against specific categories of persons; hostage taking; use of certain substances or devices for terrorist purposes; financing and bombings.<sup>1</sup> While universal adherence by states is still lacking and implementation could be improved, these conventions have been key in strengthening a global norm against international terrorism and have laid an important foundation for the prosecution and extradition of terrorists.
- In the aftermath of 9/11, the United Nations—in particular the Security Council's Counter-Terrorism Committee—has been particularly effective in promoting the **UN's Counter-Terrorism Conventions**. While in September 2001 only 2 countries had signed all 12 Conventions, the number has since risen to 60 by December 2004.
- These measures are complemented by **legal instruments that provide comprehensive measures against organised crime**, in particular drug trafficking and money laundering, activities that are in many respects connected with international terrorism. These conventions provide for international cooperation through, for example, extradition of drug traffickers and criminals, and transfer of proceedings.
- The **UN's Office on Drugs and Crime (UNODC)** in Vienna plays an important role in assisting states in the implementation of international treaties on terrorism and organized crime by providing guidance to states in drafting legislation and building criminal justice systems. Throughout the past two years, UNODC has provided direct legislative counter-terrorism assistance to over 60 countries and it has trained over 600 lawmakers and other criminal justice officials on ratification and implementation requirements. .

##### *2. Sanctions Against State Sponsors of Terrorism*

- Since the 1990s, the UN Security Council has imposed **sanctions against state sponsors of terrorism**. In 1992 and 1993, the Council imposed aviation, travel,

<sup>1</sup>United Nations Office on Drugs and Crime, Legislative Guide to the Universal Anti-Terrorism Conventions and Protocols (United Nations, New York 2003).

financial and diplomatic sanctions as well as an arms embargo **on Libya** in response to Tripoli's suspected involvement in the bombing of two civilian airliners.<sup>2</sup> The impact of these sanctions, which were complemented by a unilateral oil boycott imposed by the United States, according to many observers, contributed to getting Libya to extradite terrorist suspects and end its sponsorship of terrorism.

- In 1996, the Council imposed diplomatic **sanctions against Sudan** and threatened, but never implemented, travel sanctions in response to an assassination attempt on the life of Egyptian Prime Minister Hosni Mubarak.<sup>3</sup> While Sudan continued to deny any involvement in the assassination attempt, there are indications that Khartoum's decision to expel Usama bin Ladin and his entourage from Sudan was, partly, a reaction to the threat of travel sanctions.<sup>4</sup>
- The cases of Sudan and Libya suggest that sanctions (as well as the threat thereof and the prospect of their removal) can be an effective tool against state support of terrorism. Moreover, forceful Council action arguably served to further de-legitimize state sponsorship of terrorism and, although hard to prove, might have been successful in deterring other countries from using terrorism as a tool of statecraft that might otherwise have done so.

### 3. Denial and Interdiction

- More recently, the UN has undertaken some specific efforts to deny terrorist groups access to funding and other necessities of terrorist action, or to interdict their efforts. In 1999, the UN Security Council imposed aviation, financial, travel, diplomatic, and arms sanctions against the Taliban regime to compel it to extradite Usama bin Ladin and other terrorist suspects.<sup>5</sup> After the fall of the Taliban regime, these sanctions were maintained and extended. The Security Council maintains a **consolidated list of individual members of al-Qaida and the Taliban affected by financial and travel sanctions as well as an arms embargo**.<sup>6</sup> The list is drawn up on the basis of information provided by the member states. As of 15 February 2005, 433 individuals and entities are listed as belonging either to al-Qaida or the Taliban.<sup>7</sup> While it seems that this list includes only a subset of known al-Qaida operatives and while enforcement of the sanctions is mixed, the regime nevertheless constitutes an important element in the fight against Al-Qaida.

### 4. Creating an international counter-terrorism infrastructure

- In the aftermath of 11 September 2001, the Security Council adopted **Resolution 1373**, the most sweeping counter-terrorism measure ever adopted by the UN. For the first time, the Security Council imposed uniform obligations on *all* states, including to prevent and suppress the financing of terrorist acts, deny safe havens or any other kind of support to those that commit or facilitate them, to establish the necessary domestic legislation that criminalizes and penalises such offences, and to ensure closer cooperation among states in combating terrorist acts.
- The resolution established a **Counter-Terrorism Committee (CTC)** to monitor compliance and to facilitate the provision of technical assistance to states that would enhance their capacities to implement their obligations.<sup>8</sup> Rather than identifying specific terrorists or sanctioning states that sponsor terrorism, the CTC's essential mission is to strengthen the international infrastructure needed to fight terrorism.
- The CTC's initial request for states to report on their efforts to implement SCR 1373 produced an overwhelmingly positive response. As of today, all 191 member states have sent at least one report to the committee. Many have submitted second and third reports. Through these member state reports, the world has gained,

<sup>2</sup>SCR 748 (1992) and 843 (1993). For background on sanctions against Libya, see David Cortright and George Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder: Lynne Rienner, 2000), p. 107–121.

<sup>3</sup>SCR 1054 (1996) and 1070 (1996).

<sup>4</sup>Cortright and Lopez, *The Sanctions Decade*, pp. p. 121–126. See also David Cortright and George Lopez, *Sanctions and the Search for Security: Challenges to UN Action* (Boulder: Lynne Rienner, 2002), pp. 115–131; See also Chantal de Jonge Oudraat, "Combating Terrorism," *The Washington Quarterly*, Autumn 2003, p. 166.

<sup>5</sup>The Committee was established in resolution 1267 and a monitoring mechanism was subsequently created in by resolution 1363.

<sup>6</sup>This list was created by Security Council Resolutions 1333 (2000) and 1390 (2002).

<sup>7</sup>Second Report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities, S/2005/83, 15 February 2005.

<sup>8</sup>Security Council Resolution 1373 (2001).

for the first time, a **global overview of what laws and institutional arrangements are in place in member states** and has highlighted in which areas shortfalls exist.

- In order to reinforce CTC efforts towards more effective collaboration and country capacity building, the CTC has established a **Counter-Terrorism Executive Directorate** (CTED). The CTED, through on-site visits to capitals and other means, will allow the CTC to move beyond its exclusive focus on written reports, increase the CTC's capacity to monitor and assess what actions states are actually taking to combat terrorism (as opposed to whether states have the laws and the executive machinery to do so but fail to use them).<sup>9</sup>
  - Yesterday, CTED experts concluded their first five day on-site country visit in Morocco opening a new phase in the UN's work to strengthen state capacity in fighting the scourge. The visiting team also includes experts from Interpol, the World Customs Organization, the Financial Action Task Force and the European Union. After Morocco, CTED experts are scheduled to visit Albania, Kenya and Thailand in the next few months.
  - Partly as a result of the CTC's outreach to international, regional, and sub-regional organizations, many of these have adopted counter-terrorism programs or action plans and are now actively engaged in the fight against terrorism.<sup>10</sup>
  - The obligations inherent in resolution 1373 require states to acquire a new and complex set of capabilities. In addition to the requirement to build police and intelligence capacities there is now an extensive need to build capacities in areas such as financial surveillance, border control, and customs monitoring. The CTC does not itself possess the resources to provide technical assistance to member states but rather acts as a broker bringing together states in need of assistance and assistance providers. By the end of 2003, more than 160 states had requested or received capacity-building assistance through the CTC. It concluded that many member states continue to face difficulties in establishing the necessary enforcement mechanisms at the domestic level, particularly in cutting financial flows to terrorist groups.
5. *Preventing Weapons of Mass Destruction of falling into terrorists' hands*
- In 2004, the Security Council, in **Resolution 1540** (2004) adopted under chapter VII of the UN Charter, obliged states to take measures which will prevent non-state actors from acquiring or manufacturing nuclear, chemical or biological weapons and their means of delivery. The resolution established a committee tasked to monitor member states' compliance with the resolution. Around 50 percent of UN Member States have submitted their first report on compliance with resolution 1540. Experts are in the process of being hired and will soon be able to start assessing the reports. This underlines that the Security Council's readiness to not only react to specific terrorist acts but to act preventively.

Mr. ROYCE. I very much appreciate you coming down and we look forward to working with you, and thank you, and this briefing is adjourned.

[Whereupon, at 2:51 p.m., the Subcommittee was adjourned.]



<sup>9</sup>Letter from the Chairman of the Counter-Terrorism Committee, S/2004/124, 19 February 2004.

<sup>10</sup>Eric Rosand, "Security Council Resolution 1373, the Counter-Terrorism Committee, and the Fight Against Terrorism," *The American Journal of International Law* 97, No. 2 (April 2003), p. 337-8.